

PLEASE READ THIS SOFTWARE LICENCE AGREEMENT ("LICENCE") CAREFULLY BEFORE USING THE MIDWINTER SOFTWARE. ACCEPTING THIS AGREEMENT, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

**Midwinter Financial Services Pty Ltd
Reasonable Basis Software License and Service Agreement**

This **AGREEMENT** is made

BETWEEN:

- (1) **MIDWINTER FINANCIAL SERVICES PTY LTD** ACN 121 020 620 of Suite 2, Level 14, 111 Elizabeth St, Sydney NSW ("**MFS**"); and
- (2) ("**Licensee**"), the user(s) of the software.

RECITALS:

- (A) MFS has agreed to licence the Software to Licensee in accordance with the terms and conditions set out in this Agreement.

THE PARTIES AGREE in consideration of, among other things, the mutual promises contained in this agreement:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

Additional End User Terms means the terms and conditions set out in Schedule 2;

AFS Licence or **Australian Financial Services Licence** has the meaning given in Division 2 of Part 7.1 of the Corporations Act;

Agreement means the agreement made by this document, including all schedules, as subsequently amended or assigned from time to time;

Authorised Representative has the meaning given in Division 2 of Part 7.1 of the Corporations Act;

Business Day means a day on which banks are open for business in Sydney, New South Wales excluding a Saturday, Sunday or public holiday in New South Wales;

Business Names means MFS' business names which MFS uses in the marketing, promotion, licensing and supply of its Software.

Change in Control means:

- (a) where any single person who held directly or indirectly the beneficial interest in more than 20% of the share capital of the Licensee on the date that that person first became a shareholder, ceases to hold the beneficial interest in at least 20% of the share capital;
- (b) where any person whose voting power in the Licensee, on the date that that person first became a shareholder, was 20% or less, increases his or her 'voting power' (as defined in the Corporations Act) to more than 20%; or
- (c) where any person, other than a person who controls the assets, business or affairs of the Licensee on the Commencement Date, is in a position (alone or with one or more other such persons) to control the assets, business or affairs of the Licensee;

Commencement Date means the date of this Agreement or acceptance of the licence and service agreement contained within the software;

Confidential Information of a party means any information:

- (a) regarding the business or affairs of that party or its Related Companies;
- (b) regarding the customers, employees or contractors of, or other persons doing business with, that party or its Related Companies;
- (c) regarding the terms and conditions of this Agreement, or the commercial arrangements between the parties;
- (d) which is by its nature confidential or which is designated as confidential by the party;
or
- (e) which the other party knows, or ought to know, is confidential;

Corporations Act means the *Corporations Act 2001* (Cth);

Default Event has the meaning set out in clause 8.1;

Designated Equipment means the designated equipment specified in the Documentation or otherwise notified by MFS to the Licensee.

Dispute means any dispute that arises out of or relates to:

- (a) the Software; or
- (b) this Agreement, including the entering into, breach, termination or validity, or any subject matter, of this Agreement;

Documentation means manuals, reference guides, instructions, specifications or other documents relating to the Software provided by MFS to Licensee sufficient to enable a reasonably skilled person to operate and use the Software;

End User(s) means:

- (a) an Authorised Representative or Paraplanners who the Licensee allows to use the Software or to whom the Licensee provides the Software; and
- (b) the Licensee to the extent that the Licensee uses the Software itself.

End User Contract has the meaning set out in clause 5.3(c);

Enhancement means improvements, legislative updates, extensions or other changes to the Software designed to avoid Faults and/or correct defects in the Software, or to improve the operation or functionality of the Software.

Excluded Event means a Fault, defect or error in the Software which is caused by any of the following:

- (a) modification or addition, or attempted modification or addition, undertaken by persons other than MFS or without MFS' express written authorisation;
- (b) improper or unlawful use or modification of the Software;
- (c) use, operation or handling of the Software otherwise than in accordance with this Agreement, the Documentation or MFS' reasonable instructions;
- (d) failure to comply with any reasonable instructions of MFS;

- (e) failure to provide adequate or suitable physical environment for the Software;
- (f) any media, equipment, hardware, software or other material which does not form part of the Software
- (g) the combination of the Software with other media, equipment, hardware, software or other material not supplied by MFS or which does not form part of the Software;
- (h) use of non-MFS approved equipment, media, hardware, software or other materials, or maintenance or rectification work not performed by MFS or without MFS express written authorisation;
- (i) unstable electricity supply, smoke, heat, fire, flood, storm or other Force Majeure Event;
- (j) improper installation of the Software by persons other than MFS; or
- (k) accident, neglect, burglary, theft, vandalism or relocation.

Facility means an addition to the Software designed to enable the Software to perform functions which it would not otherwise perform.

Fault means a fault in the Software which causes the Software not to operate in substantial conformity with the Documentation.

Fees means:

- (a) the usage and support fee;
- (b) any other fees payable by the Licensee to MFS under this Agreement,

or any one or combination of them as the context requires;

Financial Services has the meaning given in Division 4 of Part 7.1 of the Corporations Act;

Financial Services Licensee has the meaning given in Division 2 of Part 7.1 of the Corporations Act;

Force Majeure Event affecting a Party means anything outside that Party's reasonable control and which occurs without the fault or negligence of that Party, including fire, storm, flood, earthquake, explosion, act of war, terrorism, invasion, rebellion, sabotage, epidemic, labour dispute (other than a dispute involving primarily or exclusively the affected party's personnel), materials or labour shortage, failure or delay in transportation and any act or omission (including laws, regulations, disapprovals or failures to approve) of any third party, or any failure of any equipment of any third party;

Further Term has the meaning set out in clause 2.2;

GST means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST law or otherwise on supply;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

GST law has the same meaning as in the GST Act;

Hotline Support has the meaning set out in Item 3 of the Schedule 1.

Insolvency Event in relation to a party (**insolvent party**) means:

- (a) the insolvent party ceases or takes steps to cease to conduct its business in the normal manner;
- (b) the insolvent party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class or them;
- (c) the insolvent party is unable to pay its debts when they are due or is deemed under the Corporations Law to be insolvent;
- (d) a liquidator or provisional liquidator so appointed to the insolvent party or a receiver, receiver and manager, official manager, trustee or similar official is appointed over any of the assets or undertakings of the insolvent party; or
- (e) an order is made or a resolution is passed for the winding up of the insolvent party;

Intellectual Property Rights means all industrial and intellectual property rights at any time protected by statute or common law, throughout the world, and includes rights in respect of copyright, patents, trade marks, designs, trade secrets, know-how, confidential information and circuit layouts, and any application or right to apply for registration of any of those rights;

Law means any:

- (a) Commonwealth, State, Territory or local government legislation, including regulations, by-laws, declarations, ministerial directions and other subordinate legislation;
- (b) common law;
- (c) governmental department or agency requirement or authorisation (including conditions in respect of any authorisation); or
- (d) mandatory code of conduct, writ, order, injunction, or judgement;

Licence means the licence for the Software granted pursuant to clause 2.1;

Licence Fee means the usage and support fee for the quantity of licences requested by the licensee as specified in Item 2 of Schedule 1;

Licensee Representative means a person(s) nominated from time to time by the Licensee;

Licensee Support Centre means the Licensee's support centres situated at the locations or such other locations located:

- (a) within Australia as notified in writing by the Licence to MFS; or
- (b) outside Australia, provided that the Licensee has first obtained MFS' prior written consent (which consent may be withheld in MFS' sole discretion or given subject to conditions)

MFS Material means all Documentation, manuals, software (including the Software), technology, designs, specifications, diagrams, descriptions, plans, calculations, know-how, process, methodology, information or other materials owned, developed or created by MFS or otherwise brought into existence or created in the course of this Agreement, including all Confidential Information of MFS;

MFS Representative means a MFS Representative or such other person nominated from time to time by MFS;

New Version means a substantial upgrade of the Software which introduces substantial new functionality or other substantial changes and may incorporate Enhancements and/or Facilities;

Paraplanner means a person who is under the direct supervision and control of an Authorised Representative of the Licensee (in its capacity as a Financial Services Licensee);

Related Company means a related body corporate as defined in the Corporations Act;

Software means:

- (a) the code version of the software specified in Schedule 1 1;
- (b) any modifications of that software (including Enhancements, Facilities and New Versions; and
- (c) any related Documentation;

Specified Purpose means for the purpose of assisting End Users to provide Financial Services within the Australian financial planning industry;

Support Address means MFS' relevant postal address, email address, telephone number and/or fax number, as the context requires, as set out in Item 4 of Schedule 1 or such other address or number as may be notified by MFS to the Licensee from time to time;

Usage and Support Fee means the usage and support fee specified in Item 2 of Schedule 1;

Support Services means the the services specified in Item 3 of Schedule 1;

Term means the period commencing on the Commencement Date and ending in one year after such date, or on such earlier date as this Agreement may be terminated.

Trade Marks means MFS' trade marks which MFS uses in the marketing, promotion, licensing and supply of its Software.

1.2 Interpretation

In this agreement, unless the context requires otherwise:

- (a) headings are for convenience only and do not affect the interpretation of this agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (e) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- (f) a reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a part, clause, party, annexure, exhibit or Schedule 1 is a reference to a part and clause of, and a party, annexure, exhibit and Schedule 1 to, this agreement and a reference to this agreement includes any annexure, exhibit and schedule;
- (h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assigns;
- (j) no provision of this agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that provision;
- (k) the word "including" or similar words or expressions do not imply any limitations; and

- (l) a reference to A\$ and \$, means the lawful currency of Australia.
- (m) multiple acceptance of this agreement through the purchase of multiple licences by a licensee or authorised representative does not affect or diminish the terms set out in this agreement

2.GRANT OF LICENCE

2.1 Grant

In consideration of the payment by the Licensee of the Licence Fee(s), MFS grants to the Licensee a non-exclusive and non-transferable licence (**Licence**) to use the Software (or multiple licences as if requested by the licensee) for one year from the commencement date, for the Specified Purpose in accordance with and subject to the terms and conditions of this Agreement.

2.2 Term

At the end of the Term, the Licence(s) will automatically renew for successive periods of 1 year (each, a Further Term), unless a Party gives the other Party not less than 14 days' notice of termination of the Licence, provided always that the effective date of termination shall occur no earlier than the end of the Term.

3.DELIVERY

3.1 Initial delivery

Within 7 days from the Commencement Date, MFS will deliver to the Licensee via the web:

- (a) a copy of the Software (or as many as required per licensee) in a electronic format or instruction of how to download the software;
- (b) an access key that allows entry to and use of the software (or as many as required per licensee) and;
- (c) Instructions on how to access to online Documentation or on request of the licensee paper copies of documentation as required delivered to the support address.

4.SUPPORT SERVICES

4.1 Support Services

- (a) Subject to payment of the Licence Fees in accordance with clause 7, MFS will provide the Support Services to the Licensee for the Term, (and any Further Term) in accordance with this Agreement.
- (b) The Licensee acknowledges that the Support Services (and any other goods or services provided by MFS under this agreement) do not constitute 'Financial Services' as that term is defined in Division 4 of Part 7.1 of the Corporations Act.

4.2 Hotline Support and Fault Reporting and Rectification

- (a) All requests by an End User for Hotline Support must be made in writing and sent by email, fax or post to the relevant Support Address or by phone.
- (b) As soon as the Licensee or an End User becomes aware of a Fault, it must report that Fault to MFS by email, phone, fax or post, (or in cases where it is not reasonably practicable to report the Fault in writing) to the relevant Support Address.

- (c) Before reporting a Fault to MFS, the Licensee must, and must ensure its End Users, use all reasonable endeavours to ensure that the Fault is not caused by an Excluded Event.
- (d) On receipt of a Fault report from an End User in accordance with clause 4.2(b), MFS will use all reasonable endeavours to rectify the Fault as soon as reasonably practicable after receipt of the Fault report.
- (e) In rectifying a Fault under clause 4.2(d), MFS may, at its option, use one or more methods, including by telephone, email, facsimile, remote access or on-site attendance at a Licensee Support Centre. Generally, MFS will only provide on-site support at a Licensee Support Centre if the Licensee has:
 - (i) carried out all reasonable requests by MFS to identify the existence of the Fault and/or reproduce the Fault prior to MFS' on-site attendance;
 - (ii) provided to MFS at the Support Address a substantially similar system, machine, equipment, software and/or other items reasonably requested by MFS to enable MFS to carry out its own tests prior to MFS' on-site attendance; and
 - (iii) otherwise complied with clause 4.3.
- (f) MFS may charge the licences for all reasonable travel, subsistence and other expenses incurred by MFS in connection with the provision of on-site support.

4.3 Assistance

The Licensee must promptly provide, and ensure its End Users provide, all assistance, information, resources, facilities, utilities and equipment reasonably required by MFS to enable the reproduction, location and rectification of Faults, including:

- (a) ensuring that all Fault reports are, wherever reasonably possible, accompanied by a copy of the database on which the Software was operating at the time the Fault occurred, on CD Rom or other media as agreed between the parties;
- (b) a description of the Fault and how to reproduce it; and
- (c) all documentary evidence of the results of the Fault.

4.4 Enhancements, Facilities and New Versions

- (a) Subject to the ongoing payment by the Licensee of the Fees, MFS must, whenever it issues an Enhancement of the Software, provide that Enhancement to the Licensee at no additional cost.
- (b) If MFS issues a Facility of the Software, it must offer to provide that Facility or New Version (as the case may be) to the Licensee. MFS may at its election charge licensee with their consent for the new issued facility.
- (c) If requested by the Licensee, MFS will install and/or implement an Enhancement or New Version.
- (d) In conjunction with the provision by MFS of an Enhancement, Facility or New Version under this clause 4.4, MFS will provide to the Licensee, at no additional cost updated Documentation and/or, if requested by the Licensee and training which MFS considers reasonably necessary for one employee of the Licensee to operate the Enhancement, Facility or New Version:

4.5 Superseded Versions

MFS will continue to provide Support Services for any version of the Software which it has provided to the Licensee which is superseded by a New Version issued under clause 4.4(b), but only up to the end of the Term. After the end of the Term, MFS shall not be required to provide Support Services for that superseded version of the Software.

4.6 Training

During the Term, MFS will provide training for the Licensee's nominated employees and Authorised Representatives in respect of the use of the Software, at such times and using such methods as determined by MFS.

4.7 Excluded Events

The Support Services do not include support for the Software that may be required because of an Excluded Event. If MFS investigates a Fault and reasonably determines that the Fault is attributable to an Excluded Event, then:

- (a) MFS shall bear no liability or responsibility in respect of the Fault;
- (b) if MFS, in its sole discretion, agrees to the End User's request that MFS rectify the Fault, MFS will use all reasonable endeavours to do so;
- (c) MFS will not be liable for any loss, damage, liability, cost or expense suffered by the Licensee or an End User as a result of MFS being unable to correct that Fault in accordance with clause 4.7 (c).

5. LICENSEE'S UNDERTAKINGS

5.1 Licensee's negative undertakings

The Licensee must not and must ensure all End Users do not:

- (a) except to the extent expressly permitted by this agreement, copy the Software or otherwise reproduce it, provided that the Licensee may make one copy of the Software for back-up purposes only, which must bear the same copyright notices and other notices included on the original;
- (b) translate, adapt, vary, tamper with, enhance or modify the Software or attempt to do any of those things;
- (c) disassemble, decompile, reverse engineer or create derivative works from the Software, or merge all or any part of the Software with any other software or attempt to do any of those things;
- (d) license, sublicense, assign, sell, transfer, dispose, distribute, provide or otherwise make available the Software in whole or in part (including but not limited to program listings, object and source program listings and object code), in any form to any person without MFS' prior written consent, except as expressly permitted under clause 5.3;
- (e) alter, remove or conceal any copyright, trademark or other proprietary rights notices that may appear on or within the Software other than in instances where the software outputs or reports are provided to a client of the licensee;
- (f) combine or incorporate the Software with or in any other software or;
- (g) attribute to MFS any of the outputs or reports when providing financial advice to a client.

5.2 Licensee's Positive Undertakings

The Licensee must:

- (a) comply with all reasonable instructions, requirements and recommendations of MFS and will all applicable laws and regulations regarding the use, operation and storage of the Software;
- (b) ensure that the Software is only used by a single End User and only on the Designated Equipment at any one time;
- (c) use the Software in accordance with the Documentation, including in accordance with the minimum operating environment or parameters specified in the Documentation;
- (d) maintain accurate and up-to-date records of the number and location of all copies of the Software and the Documentation;
- (e) supervise and control use of the Software and the Documentation in accordance with the provisions of this Agreement;
- (f) ensure that the Software is used only by End Users who are appropriately trained to use the Software;
- (g) ensure that the Software is used solely for the Specified Purpose;
- (h) protect the Software and all other MFS Material at all times from unauthorised access, use and damage; and
- (i) establish and carry out reasonable backup procedures for the Software and associated client data.

5.3 End Users

- (a) The Licensee may provide to End Users, or allow End Users to use, the Software but only in accordance with, and subject to the provisions of, this clause 5.3.
- (b) The Licensee is solely responsible for billing and collecting from End Users in connection with the provision of the Software and/or Support Services.
- (c) The Licensee must use its best endeavours to ensure that the End User complies with the Licensee's obligations under this Agreement, as if that End User was the Licensee. The Licensee's obligations under this clause 5.3(c) include ensuring that, subject to law, the Licensee:
 - (i) enters into a contract with each End User which contains:
 - (A) obligations equivalent to, and which permit the Licensee to perform its obligations under this Agreement; and
 - (B) the Additional End User Terms,
(End User Contract);
 - (ii) does not enter into terms and conditions with End Users which are in conflict with the terms and conditions of this Agreement or make any representation or provide any warranty to End Users which is more extensive than the representations or warranties expressly provided in this Agreement or otherwise approved in writing by MFS;
 - (iii) enforces this Agreement at its cost, where directed to do so by MFS; and

- (iv) does not provide to any End User, or allow any End User to use, the Software if that End User has not been provided with a copy of, and agreed to be bound by, the End User Contract.
- (d) To the extent that the Licensee does not comply with clause 5.3(c), the Licensee must indemnify and keep indemnified MFS against any loss, damage, liability, expense or cost (including all legal costs on a solicitor/client basis) suffered or incurred by MFS in connection with a claim (whether based in contract, tort (including negligence), statute or otherwise) against MFS in connection with the Licensee's breach of clause 5.3(c).
- (e) On request by MFS, the Licensee must promptly provide MFS with a copy of its standard End User Contract. The Licensee acknowledges that any review or approval by MFS of the End User Contract is not a representation by MFS that the End User Contract is legal, enforceable or appropriate.

6. INTELLECTUAL PROPERTY RIGHTS AND INFRINGEMENT

6.1 MFS owns and will retain:

- (a) the Software and all Intellectual Property Rights in that Software;
- (b) all other MFS Material and all Intellectual Property Rights in that material.

6.2 The Licensee acknowledges and agrees that:

- (a) it does not obtain any rights in and is not authorised to use, the Software or other MFS Material, except as expressly permitted under this Agreement; and
- (b) all goodwill (both existing and future goodwill) in the Trade Marks and Business Names is vested, and shall remain vested, in MFS.

6.3 If any improvement, alteration, addition, enhancement, adaptation, development or other modification (**Modification**) is made to the Software or other MFS Material by or on behalf of the Licensee or an End User (whether with or without MFS' express written authorisation):

- (a) MFS will own the Modification and all Intellectual Property Rights in that Modification; and
- (b) the Licensee must assign or procure the assignment to MFS of all interest in, title to and Intellectual Property Rights in the Modification and must execute, or procure the execution of, all such documents and do, or procure the doing of, all such further things as MFS may require in order to vest in MFS the title to and Intellectual Property Rights in the Modification; and
- (c) the Licensee must indemnify and keep indemnified MFS and its officers, employees and agents (**those Indemnified**) from and against all loss, damage, liability, cost and expense suffered or incurred by any of those indemnified arising out of or in connection with any claim by any person that the Modification infringes or will infringe the Intellectual Property Rights of any person.

6.4 The Licensee must not:

- (a) use, or apply for registration of, any Trade Mark or Business Name or any part thereof, or any other trade mark which is substantially identical with or deceptively similar to a Trade Mark, as or part of a trade mark, corporate name, business name, or domain name;
- (b) represent that it is associated in any way with MFS or the Software, except as otherwise permitted in writing by MFS;

- (c) represent that it has any right, title or interest in the Trade Marks or Business Name, or in any application for registration of them, or in any fraudulent, obvious or colourable imitation of them;
- (d) do or cause anything which may challenge, damage or endanger MFS' title to the Trade Marks or Business Name or assist or allow any other person to do so;
- (e) not, during the Term (or any Further Term) or after termination of the Agreement:
 - (i) dispute MFS' or any of its Related Company's rights in or ownership of any Trademark;
 - (ii) challenge the validity of a registration in the name of MFS or any Related Company of MFS, of a Trade Mark or Business Name; or
 - (iii) challenge, or assist any other person to challenge, any application by MFS or any Related Company of MFS, for registration of a Trade Mark or Business Name as trade marks, or as business or corporate names;

6.5 The Licensee must:

- (a) notify MFS immediately of any suspected or actual intellectual property infringement in respect of the Software or the Trade Marks, or any associated documentation or materials, which comes to the knowledge of the Licensee; and
- (b) provide assistance reasonably requested and paid for by MFS in relation to proceedings MFS may take against any person for such infringement.

6.6 MFS warrants that it is not aware that, or of any claim (**Claim**) that, the Intellectual Property Rights of any person will be or are infringed by the Software or use of the Software by the Licensee or an End User in accordance with this Agreement.

6.7 The Licensee must notify MFS immediately after it becomes aware of any Claim and promptly provide all assistance reasonably requested by MFS relating to any proceedings arising out of any Claim (**Proceedings**).

6.8 If any person makes a claim that use of the Software by the Licensee or an End User infringes the Intellectual Property Rights of any person, MFS may amend or replace the relevant parts of the Software in such manner that it ceases to be infringing.

6.9 The warranty in clause 6.6 does not apply in respect of any Modification made to the Software by or on behalf of the Licensee or an End User.

6.10 Both the Licensee and end user acknowledge that Midwinter will from time to time monitor user activity using all technologies at its disposal. This may include but is not limited to information on the Licensee and end user's clients and software use. The information will be uploaded from the software and securely stored on Midwinter's server.

7.FEES, INVOICING AND PAYMENT

7.1 Fees

- (a) The Licensee must pay to MFS:
 - (i) for the grant of the annual Licence(s) minus any applicable dealer group discounts within a period of 14 days from the commencement date or receipt of the Licence fee invoice;
 - (ii) MFS may at its discretion allow the licensee to pay the licence fee monthly. MFS at its discretion may apply an additional 10% to the licence fees. MFS may use third

parties to administer collection of these monthly payments. The licensee must accept the third party terms of these collection agencies in order to elect this monthly payment option.

- (iii) for other services outside the scope of the Support Services, the fee based on MFS' then current standard rates and charges for those other services.
- (b) The Fees do not include any amount on account of any Tax. If any Tax is payable by MFS in relation to, or on any supply under or in connection with this Agreement, then MFS may charge an additional amount equal to the amount of its Tax liability at the time of invoice.

7.2 **GST**

- (a) Words used in this clause that have a defined meaning in the GST law have the same meaning as in the GST law unless the context otherwise indicates.
- (b) Fees or other amounts referred to in this Agreement do not include GST unless expressly stated otherwise.
- (c) Except where the consideration is already expressed to include GST, to the extent that a supply made under or in connection with this Agreement is a taxable supply, the consideration for that supply will be increased by an amount equal to the GST payable by MFS on that supply.
- (d) If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

7.3 **Invoicing**

MFS will invoice the Licensee for:

- (a) the Licence Fee on or after the Commencement Date;
- (b) the Licence Fee on each anniversary of the Commencement Date given no notice of termination has been received in accordance with clause 2.2; and
- (c) other services provided outside the scope of the Support Services, at such times determined by MFS.

7.4 **Payment**

- (a) The Licensee must pay each amount invoiced within 14 Days after the date of invoice. The Licensee may not withhold, deduct or set-off any amount from or against any payment due by it to MFS in any circumstances.
- (b) MFS may charge interest on overdue amounts at an annual rate equal to 4% above the overnight cash rate from time to time of the Australian Central Bank calculated on the daily balance of the unpaid amount from the due date until the date of payment in full.

8.DEFAULT AND TERMINATION

8.1 MFS may without liability terminate this agreement at any time by written notice to the Licensee if:

- (a) the Licensee commits a material breach of any of its obligations under this Agreement (other than a breach which separately gives rise to rights under this clause 8.1) and does not remedy that breach within 30 days after MFS gives notice to the Licensee requiring it to do so;

- (b) the Licensee fails to pay any Fees or other amounts owing to MFS by their due date for payment in accordance with the provisions of clause 7.4;
- (c) there is a Change in Control of the Licensee;
- (d) an Insolvency Event occurs in relation to the Licensee;
- (e) the Licensee breaches clause 5, clause 6 or clause 13;
- (f) the Licensee breaches any of the warranties set out in clause 9;
- (g) the Licensee breaches any of the conditions of its AFS Licence or is otherwise unable to provide Financial Services in accordance with its AFS Licence or with the applicable Law;
or
- (h) any other event occurs which is specified in this Agreement as giving rise to a right for MFS to terminate,

(each, a **Default Event**).

8.2 The Licensee may terminate this agreement immediately by notice to MFS if:

- (a) MFS commits a material breach of any of its obligations under this Agreement and does not remedy that breach within 30 days after the Licensee gives notice to MFS requiring it to do so; or
- (b) an Insolvency Event occurs in relation to MFS.

8.3 MFS may terminate the whole or any part of this Agreement at any time by giving the Licensee 7 days' prior written notice.

8.4 Upon termination of this Agreement:

- (a) the Licence granted under this Agreement will immediately terminate;
- (b) MFS may, at its sole discretion, arrange to supply the Software and/or Support Services directly to End Users
- (c) the Licensee must pay all amounts owed by it in connection with this Agreement, including under any indemnities, to MFS;
- (d) MFS may invoice the Licensee for all Fees and other services performed by MFS up to the date of termination that have not been previously invoiced and the Licensee must pay to MFS all amounts specified in that invoice, and all other outstanding amounts due to MFS, within 10 Business Days of the date of that invoice;
- (e) the Licensee must, and must ensure that all End Users, immediately cease using and return or, if directed by MFS, destroy (and certify in writing to MFS the destruction of) the Software and all other MFS Material and all copies of them;
- (f) the Licensee must ensure the Software has been permanently removed from any equipment on which it is stored;
- (g) the Licensee must not enter into any further End User Contracts;
- (h) the Licensee must immediately cease providing the Software to any End User and not permit any End User to continue to use the Software, except as otherwise permitted in writing by MFS;

- (i) the Licensee must take all reasonable steps to protect all MFS' property in the possession, custody or control of the Licensee or any End User;
- (j) the Licensee must provide MFS with the latest list of End Users;
- (k) the Licensee must do all things possible to avoid or mitigate any expense or cost consequent upon termination of this Agreement;
- (l) the Licensee must, if required by MFS, immediately deliver and assign or novate to MFS or its nominee those End User Contracts nominated by MFS and where such End User Contract cannot be assigned or transferred to MFS, hold the right, title and interest of the Licensee in that End User Contract for the benefit of MFS, and do any act or thing reasonably requested by MFS in respect of that End User Contract;
- (m) the Licensee must take any other action relating to the Licence or termination of this Agreement which MFS may require;
- (n) the Licensee irrevocably authorises MFS to execute any document and otherwise do anything that is necessary to transfer, assign or novate any End User Contracts, as the lawful attorney of the Licensee;
- (o) unless this Agreement expressly states otherwise, each party's accrued rights, remedies and obligations are not affected ; and
- (p) the parts of this Agreement which are by their nature intended to survive termination of this Agreement will do so. These include clauses 1, 5, 6, 7.3, 7.4, 8.4, 9, 10, 11, 12, 14 and 16 and any other provision of this Agreement necessary to give effect to them.

8.5 In addition to any other rights and remedies MFS may have under this Agreement or otherwise, if a Default Event occurs, MFS may, by written notice to the Licensee:

- (a) cease to provide the Software or Support Services to the Licensee and/or any End Users;
- (b) arrange to provide the Software and Support Services directly to any or all End Users;
- (c) suspend the Licensee's and any End User's use of the Software;

The provisions contained in clause 8.4(a) to (n) inclusive shall apply upon, and in relation to, the exercise by MFS of the step-in rights granted to it under this clause 8.5

9. REPRESENTATIONS AND WARRANTIES

9.1 General Representations and Warranties

Each party represents and warrants to the other that:

- (a) it is entitled to enter into this agreement and perform its obligations under this Agreement;
- (b) to its knowledge there are no actions, claims, proceedings or investigations pending or threatened against it or by it which may have a material effect on the subject matter of this Agreement; and
- (c) it has all licences, authorisations, consents, approvals and permits required by applicable Laws in order to perform its obligations under this Agreement, and otherwise complies with all Laws applicable to the performance of those obligations.

9.2 Licensee's additional representations and warranties

The Licensee represents and warrants to MFS that as at the date of this Agreement and at all times during the Term (and any Further Term):

- (a) the Licensee is a Financial Services Licensee or an authorised representative of a licensee; and
- (b) all End Users are either officers or employees authorised by the Licensee (in its capacity as a Financial Services Licensee) or Authorised Representatives of the Licensee or supervised Paraplanner or support staff.

10.LIABILITY

The Licensee acknowledges and agrees that:

- (a) whilst MFS will use all reasonable endeavours to ensure that the Software is free from Faults, MFS does not make any representation or warranty regarding the performance, functionality or characteristics of the Software or as to the accuracy, reliability or completeness of any information, content or other outputs which the Licensee or an End User may use or access arising, whether directly or indirectly, from or in connection with the use of the Software;
- (b) except as expressly provided to the contrary in this Agreement and to the full extent permitted by law, all terms, conditions, warranties, undertakings, inducements or representations, whether express, implied, statutory or otherwise relating in any way to the Software, the Support Services or MFS' obligations under this Agreement are excluded by MFS;
- (c) except as expressly provided to the contrary in this Agreement, MFS excludes all liability in respect of or in connection with :
 - (i) the supply of, or failure or delay in supplying, the Software or the Support Services;
 - (ii) any Fault, error or defect in the Software;
 - (iii) the use of, or inability to use, the Software;
 - (iv) any inaccurate, incomplete or outdated information, content or output which the Licensee or an End User may use or access as a result of, or arising from, whether directly or indirectly, the use of the Software; or
 - (v) the failure or omission on the part of MFS to comply with its obligations under this Agreement.
- (d) MFS limits its liability to the Licensee for breach of any term, condition, or warranty which cannot be excluded to, at MFS's option, repairing or replacing the relevant goods or resupplying any relevant or equivalent services which are capable of being resupplied, or in either case paying the Licensee the cost of doing so;
- (e) MFS excludes all liability to the Licensee under or in connection with this Agreement for any indirect or consequential losses, damages, costs or expenses (including loss of profits of any kind, loss of revenue, loss or corruption of data, interruption to business, and economic loss of any kind, whether in contract, negligence or any other tort, under any statute or otherwise; and
- (f) to the extent permitted by law, MFS's aggregate liability to the Licensee in connection with this Agreement in respect of all claims, whether in contract, negligence or any other tort, under any statute or otherwise, will not exceed an amount equivalent to the Fees paid by the Licensee to MFS in the preceding year.

11.INDEMNITY

MFS excludes any and all liability to End Users (whether based in contract, tort (including negligence), statute or otherwise). The Licensee indemnifies and will keep indemnified MFS against any claim, loss, damage, liability, cost or expense (including legal costs on a solicitor/client basis) suffered or incurred by, or made against, MFS in connection with a claim by a third party (including an End User (whether based in contract, tort, (including negligence), statute or otherwise) in connection with:

- (a) the supply or use of, or a delay in supplying or a failure to supply, the Software, the Support Services or any other goods or services;
- (b) an error, fault or defect in, the Software or in the supply of any Support Services or other goods or services; or
- (c) any information, content or outputs directly or indirectly resulting from or arising out of the use of the Software.

12.CONFIDENTIALITY

12.1 Confidentiality

- (a) Subject to clause 12.2, each party (**Recipient**) agrees to keep confidential, and not to use or disclose, other than as permitted by this Agreement, any Confidential Information of the other party (**Discloser**).
- (b) The obligation of confidence in clause 12.1 extends to Confidential Information provided to or obtained by a party before entering into this Agreement.

12.2 Exclusions

- (a) The obligation of confidence in clause 12.1 does not apply to Confidential Information that is:
 - (a) required to be disclosed by applicable Law or the rules of any stock exchange on which the Recipient's securities are listed, provided that the Recipient discloses the minimum amount of Confidential information required to satisfy the Law or rules and, before disclosing any information, the Recipient provides a reasonable amount of notice to the Discloser and exhausts all reasonable steps (whether required by the Discloser or not) to maintain such Confidential Information in confidence;
 - (b) in the public domain otherwise than as a result of a breach of this Agreement or another obligation of confidence;
 - (c) independently developed by the Recipient; or
 - (d) already known by the Recipient independently of its interaction with the Discloser and free of any obligation of confidence.
- (b) MFS may use or disclose any Confidential Information relating to End Users (**End User Information**) to the extent that:
 - (i) it is necessary to do so, for MFS to decide whether to supply, suspend or limit the supply to the Licensee or an End User of the Software or Support Services or any other goods or services of MFS or its Related Companies;
 - (ii) it is necessary to do so to supply the Software or Support Services to the Licensee or End Users or for the Licensee to provide the Software to any End Users;
 - (iii) such information is public knowledge or is obtained without restriction as to further disclosure from a source other than the Licensee through no breach of confidentiality by that source.

- (c) The Licensee must provide MFS with all End User Information which MFS requests from time to time for the purposes of clause 12.2 (b).
- (d) If MFS ceases to supply the Software or Support Services or terminates this Agreement (or, in either case, is entitled to do so), the restriction in clause 12.1 so far as it relates to End User Information shall no longer apply and MFS may, subject to Law, use End User Information for any purpose whatsoever.

12.3 Preventing Disclosures

Each party must take all reasonable steps and do all such reasonable things as may be necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the other party.

12.4 Remedies for breach

- (a) Each party acknowledges that the value of the other party's Confidential Information is such that an award of damages or an account of profits may not adequately compensate if this clause 12 is breached.
- (b) Each party acknowledges that, without in any way compromising its right to seek damages or any other form of relief in the event of a breach of this clause 12, a party may seek and obtain an ex-parte interlocutory or final injunction to prohibit or restrain the other party or its advisers from any breach or threatened breach of this clause 12.

13.ASSIGNMENT AND SUBCONTRACTING

- 13.1 MFS may, on giving the Licensee written notice, subcontract the performance of any of its obligations under this Agreement to any third party, including a Related Company of MFS.
- 13.2 MFS may, on giving the Licensee written notice, assign any of its rights or obligations under this Agreement to any third party.
- 13.3 The Licensee may not assign its rights or obligations under this Agreement without MFS' prior written consent.
- 13.4 A Change in Control of the Licensee shall be deemed an assignment for the purposes of clause 13.3 in which case the Licensee must ensure that no Change in Control of the Licensee occurs unless it obtains MFS' prior written consent.

14.NON SOLICITATION

- 14.1 Neither party (**Soliciting Party**) must, without the prior written agreement of the other party (**Engaged Party**), directly or indirectly engage, employ, induce or cause a third party to induce, the Engaged Party's employees or contractors to enter into a contract for services or employment with the Soliciting Party.
- 14.2 The restriction contained in clause 14.1 shall apply from the Commencement Date until the date 12 months after the earlier of:
 - (a) expiry or earlier termination of this Agreement; and
 - (b) the date that the subject employee or contractor ceases to be engaged by the Engaged Party.

15.FORCE MAJEURE

- 15.1 If a Force Majeure Event affecting a party precludes that party (**Precluded Event**) partially or wholly from complying with its obligations (except its payment obligations) under this Agreement then:
- (a) the Precluded Party must promptly notify the other party of:
 - (i) the Force Majeure Event;
 - (ii) which obligations the Precluded Party is precluded from performing (**Affected Obligations**);
 - (iii) the extent to which the Force Majeure Event precludes the Precluded Party from performing the Affected Obligations (**Precluded Extent**); and
 - (iv) the expected duration of the delay arising directly out of the Force Majeure Event;
 - (b) the Precluded Party's obligation to perform the Affected Obligations will, to the Precluded Extent, be suspended for the duration of the actual delay arising directly out of the Force Majeure Event (**Actual Delay**); and
 - (c) the other party's obligations to perform any obligations dependent on the Affected Obligations will be suspended until the Precluded Party resumes performance.
- 15.2 If the Actual Delay continues for more than 30 days, either party may terminate this Agreement immediately by giving notice to the other party.

16. DISPUTE RESOLUTION

16.1 Meeting of representatives

- (a) If a party considers that a Dispute has arisen, it may give a notice to the other party. The notice must set out reasonable particulars of the matter in dispute.
- (b) On receipt of notice of a Dispute, the MFS Representative and the Licensee's Representative must promptly commence discussions to attempt in good faith to resolve the dispute.
- (c) The MFS Representative and the Licensee's Representative must meet as often as necessary to:
 - (ii) gather, and (subject to privilege) furnish to the other, all information with respect to the Dispute which is appropriate in connection with its resolution; and
 - (iii) discuss the Dispute and negotiate in good faith to try to resolve the Dispute without resorting to any formal proceeding.

16.2 Expert appointment

- (a) This clause 16.2 applies if the Dispute relates to the adequacy of the Software or Documentation.
- (b) If the parties do not resolve the Dispute in accordance with clause 16.1 within 10 Business Days of the date of the request referred to in that clause, then either party may request that an expert agreed by the parties be appointed to determine the Dispute.
- (c) If a request is made under clause 16.2(b), but the parties fail to agree on the appointment of an expert within 10 Business Days after the request is made, either party may request the President of the Law Society of New South Wales to appoint an expert to determine the Dispute. If this expert is unable to carry out the determination either party may request the President of the Law Society to appoint another expert to determine the Dispute.
- (d) The expert appointed under this clause 16.2 acts as an expert and not an arbitrator.

- (e) The dispute resolution proceedings under this clause are not arbitration proceedings under the *Commercial Arbitration Act 1985* (WA).
- (f) The expert's determination is final and binding on the parties.
- (g) The parties must equally bear the expert's costs.

16.3 Dispute resolution procedures binding

- (a) Subject to clause 16.3(b), compliance with this clause 16 is a condition precedent to a party's entitlement to commence legal proceedings in relation to a Dispute.
- (b) This clause 16 does not apply to a dispute in which a party seeks urgent interlocutory relief.

17.NOTICES

17.1 Notices

Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party to this agreement:

- (a) must be legible, in writing and in English and sent to the address or fax number specified below:
 - (i) if to MFS, at the address, or email address or fax number specified in Item 4 of the Schedule 1
 - (iv) if to the Licensee:
Address: Suite2, Level 14, 111 Elizabeth St, Sydney NSW.
- (b) is regarded as being given by the sender and received by the addressee:
 - (i) if delivered in person, when delivered to the address;
 - (ii) if by post, on the 3rd Business Day following the date of postage; or
 - (iii) if by facsimile transmission when transmitted to the address,

but if the delivery or receipt is on a day that is not a Business Day or is after 4.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day.

18.GENERAL

18.1 Relationship

This Agreement does not create a relationship of employment, agency or partnership between the parties. The Licensee has no right to incur, assume or create any obligation, liability or expense on behalf of MFS and must not represent that it is authorised to act on behalf of MFS.

18.2 Entire Agreement

This agreement constitutes the entire agreement of the parties about its subject matter at the date of this agreement and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.

18.3 Waiver

Waiver of any provision or right under this Agreement must be in writing signed by the party entitled to the benefit of that provision or right. Failure of either party at any time to require the performance

of any provision of this Agreement will not affect the right of such party to require full performance at any time and the waiver by either party of any breach of any such provision will not be taken to be a waiver of any subsequent breach.

18.4 **Severability**

If any provision of this agreement is found by any court to be invalid or unenforceable the validity or unenforceability of such provision will not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability will remain in full force and effect.

18.5 **Applicable law**

This Agreement shall be governed and construed in accordance with the laws of the State of New South Wales and the parties agree to submit to the non- exclusive jurisdiction of the courts of that State.

18.6 **Variation**

Midwinter at its discretion may from time to time make variations to this Agreement. These changes will be disclosed in the "What's new" section of the software main screen.

SCHEDULE 1

ITEM 1 SOFTWARE

Software: Reasonable Basis, including the following modules:

- **Super => Super** – Superannuation product replacement made easy
- **Super => Pension**– Move from super to pension environment
- **Pension => Pension** – Justify your pension product replacement
- **Investment => Investment** – Investment product replacement module
- **Contribution Optimisation** – Optimise your client’s contribution strategies
- **Transition to Retirement** – Optimise your client’s TTR strategy in minutes
- **Age Pension** – Determine client’s age pension eligibility in seconds
- **Retirement modelling** – Retirement modelling tool for singles or couples
- **Investment & Gearing (Accumulate)**– Provide optimal investment & gearing strategy advice
- **Gearing Manager** – Compare and optimise gearing strategies for clients
- **Insurance Needs** – Easily calculate the level of insurance your clients require
- **Retirement Gap Analysis** – Simple point of sale retirement projection tool
- **FundsBase**-Australia’s largest super, pension, insurance product database
- **Risk Insurance** – Premiums, features, produce a SOA within minutes.

ITEM 2 USAGE AND SUPPORT FEES

Note: these prices may be subject to dealer group discounts provided at the discretion of MFS.

Subscription Type	1 x User	Each additional User
Desktop - Reasonable Basis – Standard	\$3,690 + GST	Multiply 1 user
Desktop - Reasonable Basis - Ex-Insurance	\$2,955 + GST	Multiply 1 user
Desktop - Insurance Comparator Standalone	\$1,200 + GST	Multiply 1 user
RB Online - Standard Package	\$4690+ GST	\$2625 + GST
RB Online – Ex-Insurance	\$3955+ GST	\$1,890 + GST

ITEM 3 SUPPORT SERVICES

- (a) The provision of technical assistance regarding the use and operation of the Software (**Hotline Support**);
- (b) Rectification of Faults reported by the Licensee or an End User in accordance with clause 4.2;

- (c) the provision of Enhancements, Facilities and New Versions, including updated Documentation and training, in accordance with clause 4.4;
- (d) Remote computer access as required.

ITEM 4 SUPPORT ADDRESS

Midwinter Financial Services Pty Ltd (**MFS**)
Suite 2, Level 14,
111 Elizabeth St,
Sydney NSW 200
Tel (Toll Free): 1300 882 938
E-mail: info@midwinter.com.au

SCHEDULE 2

ADDITIONAL END USER TERMS

In accordance with clause 5.3(c) of this Agreement, End User Contracts must include provisions with the following effect:

1. Direct Supply by MFS

The Licensee acknowledges and agrees that if arrangements between MFS and the Licensee in relation to the supply of the Software and Support Services are terminated, or the Licensee defaults in the performance of its obligations under such arrangements, MFS may arrange to supply the End User directly.

2. Assignment

2.1 The Licensee shall have the right to assign or novate all or part of its rights and obligations under the End User Contract to MFS without the consent of the End User. The End User cannot assign or novate all or part of its rights and obligations under the End User Contract other than in accordance with this paragraph 2.

2.2 For the purposes of novation, the End User agrees to the novation of the End User Contract from the Licensee to MFS on receipt of a notice from either the Licensee or MFS, such novation to be on terms no less favourable than the terms of the End User Contract in existence immediately prior to the novation.

3. Resupply

The End User must not resupply, distribute, provide or otherwise make available to any person the Software provided by the Licensee (or, as the case may be, by MFS pursuant to paragraph 1).

4. Privacy and Marketing Consents

The End User consents to:

- (a) the Licensee disclosing to MFS the End User Details and the Software supplied to, or ordered by, the End User;
- (b) MFS contacting the End User for the purpose of informing the End User of cessation or proposed cessation of supply of the Software and/or Support Services by the Licensee, and/or of the supply or proposed supply of the Software and/or Support Services by MFS to the End User directly;
- (c) MFS using the information referred to in paragraph 4(a) in order to facilitate the supply of the Software and Support Services to the End User by the Licensee or MFS and for marketing purposes.

5. No reliance on MFS' representations

The End User has not relied to any extent on any omission, representation, statement or undertaking, whether written or otherwise ("**Representations**"), by or on behalf of MFS in entering into the End User Contract with the Licensee or otherwise in acquiring the Software and/or Support Services from the Licensee.

6. MFS' Liability

The End User acknowledges that:

- (a) any liability of the Licensee to the End User in respect of the supply of the Software and/or the Support Services to the End User shall be limited to at least the same extent as provided in respect of MFS' liability to the Licensee under this Agreement; and
- (b) MFS is not liable to the End User (in contract, tort (including negligence) in relation to any Software of service supplied to the Customer by the Licensee or any delay or failure to provide Products or Services.