

LICENCE AND SERVICES AGREEMENT

BETWEEN

CDM Solutions Services Pty Ltd

AND

“Subscriber”

Prepared by

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Schedule

Licence and services agreement

This licence and services agreement is dated 1 October 2018

between:

CDM Solutions Services Pty Ltd ACN 627 375 133 of 204A Balaclava Rd, North Caulfield VIC 3161
(Supplier)

and:

The subscriber that has agreed to be bound by these terms **(Company)**

BACKGROUND

- A. The Supplier has developed a proprietary software product which includes a web-based portal interface for financial planners to access certain information relating to client insurance policy information.
- B. The Company wishes to obtain a licence to use the Supplier's software on the terms set out in this agreement together with certain related services.
- C. The Supplier has the skills, background and experience in providing the services that the Company wishes to obtain.
- D. The Supplier is willing to grant the Company a licence and provide the related services to the Company and the Company is willing to appoint the Supplier to provide those services, all in accordance with the provisions of this agreement.

OPERATIVE PROVISIONS

1 Definitions and interpretation

1.1 Definitions

In this agreement unless the context indicates otherwise, the following words have the following meanings.

Adviser means a financial adviser that is a member of the Company's network of financial advisers.

Claims means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise).

Confidential Information includes any information marked as confidential and any information received or developed by the Supplier during the term of this agreement, which is not publicly available and relates to processes, equipment and techniques used by the Company in the course of the Company's business. This includes all information, data, drawings, specifications, documentation, source or object code, designs, construction, workings, functions, features and performance notes, techniques, concepts not reduced to material form, agreements with third parties, schematics and proposals and intentions, technical data and marketing information such as customer lists, financial information and business plans.

Documentation means any and all proprietary documentation made available to the Licensee by the Licensor for use with the Licensed Software, including any documentation available online.

End Users means:

- (a) Advisers to whom the Company provides access to the Software; and
- (b) Referrers to whom an Adviser provides access to the Software (if a referral feature is made available by the Company).

Fees means the fees set out in the schedule.

GST Law means the same as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Intellectual Property Rights means all intellectual property rights, including all copyright, patents, trade marks, design rights, trade secrets, domain names, know how and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application.

Moral Rights has the meaning given under the Copyright Act 1968 (Cth) and includes any similar rights existing in other countries.

Personal Information has the meaning as set out in section 6 of the *Privacy Act 1988 (Cth)* as amended from time to time.

Platform means the Supplier's platform which is used for the provision of the Services and which is accessible through the Supplier's website and/or through smart phone or tablet applications.

Privacy Requirements are the requirements that a person or entity is required to comply with under the *Privacy Act 1988 (Cth)* as amended from time to time, its regulations and any other business practices and codes relevant to the Parties under this Agreement.

Parties means the Supplier and the Company, and **Party** means either one of them.

Referrer means a person or entity that has referred clients to an Adviser.

Software means the "CDM Solutions" software as described in the schedule.

Services means the services to be provided by the Supplier under this agreement as set out in the schedule.

Supplier's Personnel means any person or persons that the Supplier designates to perform the Services on the Supplier's behalf.

Termination Date means the date of termination of this agreement by the Company or the Supplier.

Website means the website located at CDMSolutions.com.au.

1.2 Interpretation

In this agreement unless the context otherwise requires:

- (a) words importing any gender include every gender;

- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;
- (d) references to numbered clauses, paragraphs and schedules are references to the relevant clause or paragraph in or schedule to this agreement;
- (e) reference in any schedule to this agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- (f) any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- (g) the headings to the clauses and schedules of this agreement are not to affect the interpretation;
- (h) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- (i) the word "including" (and related forms including "includes") means "including without limitation".

2 Grant of licence

- (a) The Supplier grants to the Company a non-exclusive, world-wide, non-transferable licence to use the Software and the Documentation during the term of this agreement solely through the Website and/or smart phone or tablet applications, subject to and in accordance with the terms and conditions set out in this agreement.
- (b) The Company may permit End Users to use the Software through the Website and/or smart phone or tablet applications.
- (c) The Licensee must not:
 - (i) use the Software for any purpose or in any manner other than as set out in clause 2(a);
 - (ii) use the Software in any way that could damage the reputation of the Supplier or the goodwill or other rights associated with the Software;
 - (iii) permit any third party to use the Software other than as set out in clause 2(b);
 - (iv) permit any person to link to any page containing any part of the Software (including via a hyperlink or RSS feed) without the Supplier's written consent; or
 - (v) modify or remove any copyright or proprietary notices on the Software or the Documentation.
- (d) Except as expressly permitted by this Agreement, and except to the extent that applicable laws, including the Copyright Act 1968 (Cth), prevent the Supplier restraining the Company from doing so, the Company must not:

- (i) reproduce, make error corrections to or otherwise modify or adapt the Software or the Documentation or create any derivative works based upon the Software or the Documentation;
- (ii) de-compile, disassemble or otherwise reverse engineer the Software or permit any third party to do so.

3 Intellectual Property Rights

- (a) Nothing in this Agreement constitutes a transfer of any Intellectual Property Rights.
- (b) The Company:
 - (i) acknowledges that the Supplier (or its associated entities or persons) owns all Intellectual Property Rights in the Software and all Intellectual Property Rights created by the Supplier in connection with the Services, that now exists or that later comes into existence; and
 - (ii) will not directly or indirectly do anything that would or might invalidate or put in dispute the Supplier's title in the Software.
- (c) If any person makes any claim alleging that any of the Software (or use of the Software) infringes any Intellectual Property Rights or Moral Rights of any person, the Company must:
 - (i) promptly notify the Supplier in writing;
 - (ii) not make any admissions or take any action in relation to the claim without the Supplier's written consent;
 - (iii) permit the Supplier control over any and all investigations, negotiations, settlement and dispute resolution proceedings relating to the claim; and
 - (iv) cooperate with, assist and act at all times in accordance with the reasonable instructions of the Supplier, in relation to the claim and any consequent investigations, negotiations, settlement and dispute resolution proceedings.
- (d) The obligations accepted by the Company under this clause 3 survive termination or expiry of this agreement.

4 Services

- (a) The Supplier will provide the Services to the Company and the Company's End Users in consideration for the Company paying the Fee to the Supplier, subject to the provisions of this agreement.
- (b) The Services will be performed by the employees or agents that the Supplier may choose as most appropriate to carry out the Services.
- (c) The Supplier agrees to provide the Company's personnel with training in relation to the use of the Services as set out in the schedule.
- (d) The Supplier agrees to provide the Company and the End Users with technical and IT support as set out in the schedule.

5 Fees

5.1 Payment of Fees

- (a) In consideration of the provision of the Services and the granting of the Licence in accordance with this agreement, the Company will pay the Supplier the Fees.
- (b) Where the Supplier's charges are based on an hourly rate, any time spent which is less than an hour is charged in six minute blocks.
- (c) The Company acknowledges that the Fees are exclusive of any GST that may be charged by the Supplier to the Company, and therefore, the Supplier will be entitled to add on GST.

5.2 Invoicing

- (a) The Supplier will provide the Company with a tax invoice in accordance with the GST Law in relation to fees payable under this clause 5. The tax invoices will be provided monthly in advance unless the parties agree otherwise.
- (b) Payment will be made by the Company to the Supplier within 7 days after receiving the Supplier's invoice.
- (c) When making a payment, the Company must quote relevant reference numbers and the invoice number.

5.3 Variation of Fees

The Supplier is entitled to vary the Fees with written notice to the Company 30 days prior to the change being implemented. If the Company does not agree to the variation of the Fees the Company may terminate this agreement.

5.4 Failure to pay

If the Company does not make a payment by the date stated in an invoice or as otherwise provided for in the agreement, the Supplier is entitled to do any or all of the following:

- (a) charge interest on the outstanding amount at the ATO General Interest Charge Rate; require the Company to pay, in advance, for any Services (or any part of the Services) which have not yet been performed; and
- (b) not perform any further Services (or any part of the Services).
- (c) terminate the Services and the Software licence if the outstanding fees are not paid within 90 days of invoice.

6 Company's obligations

- (a) During performance of the Services the Company will:
 - (i) co-operate with the Supplier as the Supplier reasonably requires;
 - (ii) provide the information and documentation that the Supplier reasonably requires;

- (iii) ensure that the Company's staff and agents cooperate with and assist the Supplier; and
 - (iv) comply with any other obligations as may be set out in the schedule.
- (b) The Company must designate one person as a primary contact and one person as an alternate contact (each a **Relationship Manager**), who will serve as the exclusive point of contact with the Supplier for technical support and other issues related to the provision of the Services that may arise between the Parties. Each Relationship Manager is deemed to have equal authority to make decisions on behalf of Licensee.

7 Modifications and Enhancements of the Platform

- (a) If the Supplier, in its sole discretion, develops, changes, revises, enhances or modifies the Platform (each a "Platform Revision"), the Supplier shall make all such Platform Revision(s) available to the Company and the End Users at no additional fee, cost or expense to the Company. The Supplier shall not be obligated to develop any Platform Revision including without limitation modifying the Platform to operate on new or modified systems, equipment or configurations.
- (b) Each new functionality of the Platform or improvement to the Platform will be promptly made available to the End Users.
- (c) All right, title and interest in each and every Platform Revision shall be solely vested in the Supplier.

8 No partnership or employment relationship

- (a) Nothing in this agreement constitutes the relationship of employer and employee between the Company and the Supplier or between the Company and the Supplier's Personnel.
- (b) It is the express intention of the Parties that any such relationships are denied.

9 Confidentiality

- (a) Each Party must keep the other Party's Confidential Information confidential and not deal with it in any way that might prejudice its confidentiality.
- (b) The Parties acknowledge that information resulting from the activities of the Supplier pursuant to this agreement will also be regarded as Confidential Information. The Parties agree that the Parties' obligations in clause 9(a) extend to this category of information.
- (c) The Supplier's obligations in relation to the Confidential Information will continue for as long as the Confidential Information is maintained on a confidential basis by:
 - (i) the Company, in the case of Confidential Information pertaining to the Company; and
 - (ii) the End Users, in the case of Confidential Information pertaining to the End Users or their clients.
- (d) At the Termination Date, or when earlier directed by a Party, all Confidential Information relating to that Party must be returned to that Party, including all copies of the Confidential Information or any extracts or summaries of the Confidential Information that the other Party makes.

- (e) The Confidential Information does not include information which:
 - (i) is generally available in the public domain otherwise than as a result of a breach of clause 9(a) by a Party; or
 - (ii) was known by a Party prior to the other Party disclosing the information to that Party.
- (f) The Supplier agrees that the Company may require any of the Supplier's Personnel to sign a confidentiality agreement in a form that the Company approves, as a condition of the Company's acceptance of any of the Supplier's Personnel.
- (g) The Parties acknowledge that damages may be an inadequate remedy for breach of this clause 9 and that a Party may obtain injunctive relief against the other Party for any breach of this clause 9.
- (h) The obligations accepted by the Parties under this clause 9 survive termination or expiry of this agreement.

10 Privacy

The Parties acknowledge that the Supplier will be collecting and storing Personal Information about the End Users' and their clients and advisers in connection with the provision of the Services under the agreement. The Supplier agrees:

- (a) to comply with all privacy laws in relation to Personal Information that is collected in relation to this Agreement;
- (b) to comply with the Privacy Requirements to the extent that they relate to Personal Information provided to a Party under this Agreement.
- (c) that Personal Information obtained through this Agreement may be used for the sole purpose of providing the Services and under no circumstances must Personal Information be used for marketing or any purpose unrelated to the provision of the Services.
- (d) to comply with the Company's reasonable directions or requirements concerning the fair handling of Personal Information or data security matters.

11 Warranties and liability

11.1 Warranties

- (a) The Supplier warrants to the Company that it has the right to license the software and all relevant Intellectual Property Rights.
- (b) The Supplier warrants that it will use reasonable care and skill in performing the Services.
- (c) Each Party warrants to the other that it has the right and ability to enter into this Agreement and that this Agreement will be legally binding on it.

11.2 No warranties in relation to completion

The Supplier provides no warranty that any result or objective can or will be achieved or attained at all or by any date, whether stated in this agreement or elsewhere.

11.3 Liability

- (a) To the full extent permitted by law, the Supplier excludes all liability in respect of loss of data, interruption of business or any consequential or incidental damages.
- (b) To the full extent permitted by law, the Supplier excludes all representations, warranties or terms (whether express or implied) other than those expressly set out in this agreement.
- (c) The Supplier's total aggregate liability for all Claims relating to this agreement is limited to the Fees paid under this Agreement.
- (d) Either Party's liability for any claim relating to this agreement will be reduced to the extent to which the other Party contributed to the damage arising from the claim.
- (e) This agreement is to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such legislation applies, to the extent possible, the Supplier limits its liability in respect of any claim to, at the Supplier's option:
 - (i) in the case of goods:
 - the replacement of the goods or the supply of equivalent goods;
 - the repair of the goods;
 - the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - the payment of having the goods repaired, and
 - (ii) in the case of services:
 - the supply of the services again; or
 - the payment of the cost of having the services supplied again.

11.4 No reliance

Each of the Parties acknowledges that, in entering into this agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this agreement. Any conditions, warranties or other terms implied by statute or common law are excluded from this agreement to the fullest extent permitted by law.

11.5 Information provided by Company

The Company is responsible for the accuracy and integrity of any data that it provides to the Supplier in connection with the Services or this agreement. The Company agrees to indemnify the Supplier fully against all liabilities, costs and expenses which the Supplier may incur as a result of any breach of this clause 11.5 by the Company or the Company's personnel.

11.6 Information provided by End Users

The Company acknowledges that the Supplier shall not be held liable in respect of any lack of accuracy or integrity in data that is provided by End Users.

11.7 Survival of obligations

The obligations accepted by the Supplier and the Company under this clause 10 survive termination or expiry of this agreement.

12 Termination

- (a) This agreement continues until it is terminated by one of the Parties in accordance with this agreement.
- (b) Either Party may terminate this agreement by notice in writing to the other if the Party notified:
 - (i) fails to observe any term of this agreement; and
 - (ii) fails to rectify this breach, to the satisfaction of the notifying Party, following the expiration of 30 days' notice of the breach being given in writing by the notifying Party to the other Party.
- (c) A Party may terminate this agreement upon the happening of any of the following events:
 - (i) by the giving of at least 1 month's written notice to the other Party of the intention to terminate this agreement;
 - (ii) if the other Party enters into a deed of arrangement or an order is made for it to be wound up;
 - (iii) if an administrator, receiver or receiver/manager or a liquidator is appointed to the other Party Company pursuant to the Corporations Act 2001 (Cth); or
 - (iv) if the other Party would be presumed to be insolvent by a court in any of the circumstances referred to in the Corporations Act 2001 (Cth).
- (d) The Company may, at its discretion, pay to the Supplier the equivalent amount of the fees payable by the Company to the Supplier during the notice period in lieu of any notice period relating to termination of this agreement under paragraph 12(b)(i).
- (e) Upon termination of this agreement:
 - (i) any fees, expenses or reimbursements payable by the Company to the Supplier in respect of any period prior to the Termination Date must be paid by the Company within 7 days after the Termination Date.
 - (ii) the parties are immediately released from their obligations under the Agreement except those obligations in clause 9 and any other obligations that, by their nature, survive termination;
 - (iii) each Party retains the Claims it has against the other;
 - (iv) the Company's right to use the Software immediately ceases and the licences granted under this agreement terminate;

13 General

13.1 Force majeure

- (a) Neither Party has any liability under or may be deemed to be in breach of this agreement for any delays or failures in performance of this agreement which result from circumstances beyond the reasonable control of that Party.
- (b) The Party affected by these circumstances must promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- (c) If such circumstances continue for a continuous period of more than 6 months, either Party may terminate this agreement by written notice to the other Party.

13.2 Amendment

This agreement may only be amended in writing signed by duly authorised representatives of the Parties.

13.3 Assignment

- (a) Subject to paragraph 13.3(b), neither Party may assign, delegate, subcontract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this agreement without the prior written agreement of the other Party.
- (b) A Party may assign and transfer all its rights and obligations under this agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under this agreement.

13.4 Entire agreement

- (a) This agreement contains the whole agreement between the Parties in respect of the subject matter of the agreement.
- (b) The Parties confirm that they have not entered into this agreement on the basis of any representation that is not expressly incorporated into this agreement.

13.5 Waiver

- (a) No failure or delay by the Supplier in exercising any right, power or privilege under this agreement will impair the same or operate as a waiver of the same nor may any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- (b) The rights and remedies provided in this agreement are cumulative and not exclusive of any rights and remedies provided by law.

13.6 Agency, partnership etc

- (a) This agreement will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this agreement.

- (b) Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

13.7 Further assurance

Each Party to this agreement must at the request and expense of the other do all things reasonably necessary to carry out the provisions of this agreement or to make it easier to enforce.

13.8 Severance

If any provision of this agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this agreement and rendered ineffective as far as possible without modifying the remaining provisions of this agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this agreement.

13.9 Notices

A notice or other communication connected with this agreement has no legal effect unless it is in writing. In addition to any other method of service provided by law, the notice may be sent by pre-paid post to the address of the addressee as set out in this agreement, or sent by email or fax to the email or fax number of the addressee.

13.10 Law and jurisdiction

This agreement takes effect, is governed by, and will be construed in accordance with the laws from time to time in force in Victoria, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria.

SCHEDULE

Description of Software: Software for financial advisers to obtain data feeds of their client insurance policies and reporting on the policies to improve efficiencies in the business.

Services:

- hosting data provided by the Company and End Users;
- training as described below; and
- technical and IT support as described below.

Fees:

- One-off set up fee \$200 (Unless otherwise agreed)
- Monthly fee \$30 per Adviser
- Technical and IT support as set out below

Training (clause 4(c)):

The Supplier must provide the following training to the Company's personnel:

- At mutually agreed times, the Supplier shall provide up to 2 hours of initial training to the Company's personnel on setup, integration, regular usage, and common user support issues related to the Platform and the Services. Such training will include both general user experience and technical support issues. Training will be provided by webinar and/or in person.

Technical and IT support (clause 4(d)): If requested by the Company, technical support will be provided at a rate of \$180 per hour and billed in 6 minute blocks. This includes any support that is in addition to the initial training referred to above (for example, if the Company requests that the Supplier train or assist End Users).