



agrimaster
complete rural business systems

AGRIMASTER END USER LICENCE AGREEMENT

INTRODUCTION

- A. Bricole Nominees Pty Ltd ACN 009 316 090 ("Owner") is the owner of the Software.
- B. The Licensor holds an exclusive licence from the Owner to licence the Software to end users.
- C. The Customer wishes to obtain a Licence to use the Software.
- D. The Licensor offers a Licence to the Customer subject to the terms and conditions set out in this Agreement.

IT IS AGREED

1. Definitions

1.1 The following definitions are applicable to this Agreement:

- (1) "Agreement" means this document, including the Schedule;
- (2) "Back-up" means the copying of all or part of the Software by the Customer for the purpose only that it may be used by the Customer in lieu of the Software originally supplied by the Licensor in the event that the original copy is lost, destroyed or rendered unusable;
- (3) "Business Day" means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (4) "GST" means GST within the meaning of the GST Act;
- (5) "GST Act" means A New Tax System (Goods and Services Tax) Act 1999;
- (6) "Licence" means the licence to use the Licensed Products granted to the Customer under this Agreement;
- (7) "Licence Fee" means the amount and manner of payment specified in Item 1 of the Schedule;
- (8) "Licensed Products" includes the Software, the Manual and all other products of the Licensor related to the Software supplied to the Customer by the Licensor from time to time;
- (9) "Manual" means the manual or manuals which may be in electronic or hard copy form which describes the operation of the Software and contains instructions on the use of the Software supplied by the Licensor to the Customer from time to time;
- (10) "Software" means the computer program specified in Item 2 of the Schedule and includes any Updates provided under an Update Subscription Agreement;
- (11) "Updates" means any enhancement, modification or update of the Software and any associated instruction and installation materials provided by the Licensor under an Update Subscription Agreement but excludes new releases of the Software; and
- (12) "Update Subscription Agreement" means an agreement between the Licensor and the Customer providing for the Licensor to provide Updates to the Customer.

1.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a party includes the party's executors, administrators, successors and permitted assigns;
 - (e) a statute, regulation or provision of a statute or regulation ("Statutory Provision") includes:
 - (i) that Statutory Provision as amended or re-enacted from time to time; and
 - (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
 - (f) money is to Australian dollars, unless otherwise stated.
- (2) "Including" and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings are for convenience only and do not form part of this Agreement or affect its interpretation.
- (5) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
- (6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

AGRIMASTER END USER LICENCE AGREEMENT.rtf

1.3 Parties

- (1) If a party consists of more than one person, this Agreement binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.
- (3) A party which is a trustee is bound both personally and in its capacity as a trustee.

2. Licence

Subject to payment of the Licence Fee in accordance with clause 3 and the terms of this Agreement, the Licensor grants to the Customer an irrevocable, non-transferable non-exclusive licence to use the Licensed Products in respect of one computer at the same time.

3. Licence Fee

3.1 In consideration of the grant of licence under clause 2, the Customer must pay the Licence Fee to the Licensor in accordance with the terms specified by the Licensor.

3.2 The Licence Fee and any other amounts payable pursuant to this Agreement are exclusive of GST and all federal, state, local, municipal or other excise, sales, use, property, or similar taxes and fees now in force or enacted in the future.

3.3 All such taxes and fees referred to in clause 3.2, other than the income taxes of the Licensor, will be paid by the Customer. The Customer will obtain and provide to the Licensor any certificate of exemption or similar document required to exempt any transaction under this Agreement from sales tax, GST, use tax or other tax liability.

3.4 The Customer is responsible for payment of any stamp duty or other impost on this document.

4. Persons Using Software

4.1 The Customer agrees that the only persons who are permitted to use the Software under the Licence including use for back-up purposes are the Customer, its employees and authorised persons carrying out the work of the Customer.

4.2 The Customer agrees not to sublet the use of the Software to any person or sublet time on or charge for access to the specified machine for the use of the Software unless the prior consent in writing of the Licensor has been obtained.

5. Use

5.1 The Customer may install and use the Software only on one computer at a time for its own legitimate business purposes. The Customer may install and use the Software on another computer provided that the Customer removes the Software from the other computer first. The Customer must not copy the Software, except for Back-up purposes for the computer that the Software is installed upon. If the Customer wishes to use or install the Software on more than one computer at a time, the Licensor will provide a further copy for an additional fee.

5.2 The Customer must not use, reverse assemble, reverse compile, modify or transfer the Software or any copy in whole or in part, except as expressly provided for in this Agreement. Any other act involving using, reverse assembly, reverse compilation, copying, or reproducing the Software is prohibited.

6. Property

6.1 Nothing in this Agreement will be deemed to pass the property in the Licensed Products to the Customer.

6.2 The Customer will bear the risk of loss or damage to the Licensed Products.

7. Assignment

The Customer may not sub-license, assign or transfer its rights and obligations in this Agreement without the prior written consent of the Licensor.

8. Intellectual Property Indemnity

8.1 The Licensor warrants to the Customer that, to the best of the Licensor's knowledge, the Licensed Products do not infringe any patent, copyright, or trade secret.

8.2 In the event any legal proceedings are brought against the Customer claiming an infringement of a patent, copyright, or trade secret based on the Customer's use of the Licensed Products, the Licensor agrees to defend at the Licensor's own expense any such legal proceedings relating to such claim or claims and to hold the Customer harmless from any damages incurred or awarded as the result of settlement or judgment against the Customer, provided that:

(1) the Customer gives the Licensor prompt written notice within 30 days of any such claim or of the institution of any such claims against the Customer; and

(2) the Customer cooperates completely with the Licensor in providing all necessary authority, information, and reasonable assistance to enable the Licensor, at the Licensor's option, to settle or defend such claims.

8.3 The Licensor will not indemnify the Customer to the extent that an infringement, suspected infringement or alleged infringement arises from:

(1) use of the Software by any means other than in accordance with this Agreement;

(2) use of the Software in a manner or for a purpose not reasonably contemplated or not authorised by the Licensor; and

(3) modification or alteration of the Software.

9. Trade Secret, Security and Confidentiality

9.1 The Customer acknowledges that the Licensed Products are the subject of copyright and proprietary confidential information and that the Customer will have no right, title or interest in the Licensed Products, except as expressed in this Agreement.

9.2 The Customer will take all reasonable precautions to maintain the confidentiality of the Licensed Products, but not less than that employed to protect its own proprietary information.

9.3 Without limiting the generality of clause 9.2, the Customer will not make or permit any other person to make any disclosure of the design, structure or contents of the Software to any person except for displaying the operation of the Software on the Customer's computer.

9.4 In consideration of the grant of the Licence, the Customer covenants with the Licensor that it will not create or assist or procure any other party to create any other software which has the "look and feel" of the Licensed Products as that expression is generally understood in the software industry notwithstanding that such other software may not constitute a reproduction of the Licensed Products for the purpose of copyright law.

9.5 Without limiting the generality of clause 16, the Customer acknowledges that the obligations and covenants set forth in this clause 9 will survive termination, for whatever reason, of the Agreement.

10. Security

The Customer will not transfer or permit to be transferred the Software or any adaptation of it or part of it to any person unless authorised beforehand in writing by the Licensor.

11. Warrant of Performance

11.1 The Licensor warrants that the Software will conform to the specifications contained in the Manual when delivered to the Customer.

11.2 The Customer acknowledges, however, that errors may exist or occur in the Licensed Products and that the Licensor will not be responsible for any loss or damage arising from any error of those products.

11.3 The Licensor warrants to the Customer but not to any assignee or other party that any computer media supplied pursuant to this Agreement will be free from defects in materials and workmanship for a period of 90 days from the date of delivery to the Customer. The Licensor will replace free of charge any defective computer media which is returned to it at the Suppliers place of business within the 90 day warranty period.

11.4 The warranty provided for under clause 11.3 does not apply to defects in the computer media due to:

- (1) damage incurred in shipping;
- (2) fair wear and tear;
- (3) accidental damage;
- (4) deliberate or reckless act of the Licensee or a third party;
- (5) improper repair or alteration of the computer media;
- (6) unreasonable use (including failure to provide reasonable and necessary maintenance), misuse or abuse of the computer media; or
- (7) exposure of the computer media to corrosive conditions.

11.5 The warranty under clause 11.3 contains the only warranties of Licensed Products by the Licensor and any other warranty or representation whether in writing or oral, express or implied including any representation of fitness for a particular purpose given by any person acting on behalf of the Licensor is not binding on the Licensor. This clause does not purport to exclude any rights which the Licensee may have which are provided by statute and which cannot be excluded.

11.6 No employee, agent or representative of the Licensor has the authority to bind the Licensor to any oral representation or warranty concerning the Licensed Products. Any written representation or warranty not contained in this Agreement will not be enforceable by the Customer.

12. Limitation of Liability

12.1 Except as expressly stated in this Agreement the Licensor will not be liable for the quality, condition or description of the Software or for any type of loss or damage caused to the Licensee by the Licensor's performance of its obligations under this Agreement.

12.2 Without limiting the generality of clause 12.1, the Licensor will not be liable for any consequential loss including but not limited to the cost of removal or reinstallation, alternative computer costs, labour costs, loss of goodwill or loss of profits.

12.3 Any term or condition to the contrary of this clause 12 which is implied by statute or common law is to the extent permitted by law expressly excluded.

13. Customers Covenants

The Customer covenants to the Licensor that during the term of this Agreement it will not without the Licensor's prior written consent:

- (1) offer to sell, lease or sub-licence the Software;
- (2) copy nor permit copies to be made of the Licensed Product;
- (3) break or permit others to break any copy product code of the Software;
- (4) use or permit others to use the Licensed Product in a computer services bureau, network, time sharing, interactive cable television, multiple CPU or multiple user arrangement;
- (5) modify or alter the Licensed Product in any manner;
- (6) communicate or permit to be communicated the contents of the Licensed Product to persons other than the Customer's employees or authorised persons carrying out the work of Customer;
- (7) make telecommunication data transmissions of the Licensed Product; and
- (8) make copies of the Licensed Product for purposes of incorporating any part of it into any other computer program not generated by the Software.

14. Termination by the Licensor

Upon the happening of any of the following events the Licensor has the right to immediately terminate the Agreement;

- (1) the Customer commits a breach of any of the covenants contained in clause 13;
- (2) the Customer attempts to assign its interest in the Software to any other company or person without the consent of the Licensor; or
- (3) the Customer discloses or copies any material, Software or confidential information without the consent of the Licensor except where the copying of the Software is for Back-up purposes.

15. Termination by the Customer

The Customer may terminate the Agreement at any time by giving the Licensor 30 days' notice in writing of its decision to terminate the Agreement.

16. Effect of Termination

16.1 Termination of this Agreement will terminate the Licence but will not relieve the Customer from any expressed or implied obligation under this Agreement.

16.2 On termination of this Agreement the Customer will:

- (1) return all written material and Manuals relating to the Software within 21 days or destroy them in a manner as requested by the Licensor;
- (2) immediately delete the Software from any computer in which the Software was installed;
- (3) return the Software within 21 days or destroy it in a manner as requested by the Licensor.

16.3 Termination under the express provisions of this Agreement will be without prejudice to any rights and remedies as would have accrued to either the Licensor or the Customer if such provisions had not been included in the Agreement.

17. Applicable Law

17.1 The Law of Western Australia governs this Agreement.

17.2 The parties submit to the non-exclusive jurisdiction of the Courts of Western Australia and the Federal Court of Australia.

18. Severability

If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

19. Waiver

An express or implied waiver by either party of any right or of any claim against the other party under this Agreement will not constitute nor be deemed to be a waiver of any other right or of any other claim against that other party under this Agreement.

20. Amendment or Variation

An amendment or variation to this Agreement is not effective unless it is in writing and duly executed by each party.