



## AGRIMASTER SOFTWARE PROFESSIONAL PARTNER LICENCE AGREEMENT: TERMS & CONDITIONS

### INTRODUCTION

- A. Brichole 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 distribute the Software and licence the Software to end users.
- C. The Customer wishes to provide services to its clients by use of the Software and distribute the Software to its clients, and to obtain a Licence for his purpose.
- D. The Licensor offers to the Customer and the Customer accepts a Licence subject to the terms and conditions set out in this Agreement.

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### IT IS AGREED

#### 1. Definitions

##### 1.1 The following definitions are applicable to this Agreement:

- (1) "Agreement" means this document, including the Schedule;
  - (2) "Agrimaster Professional Partner" or "APP" means a professional firm or business which satisfies the Licensor's requirements to be accredited and entitled to the benefits of accreditation as an APP;
  - (3) "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;
  - (4) "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;
  - (5) "Commencement Date" means the date of delivery of the Software for use by the Customer;
  - (6) "End User Licence Agreement" means the Licensor's then current standard End User Licence Agreement that accompanies each copy of the Software which may be varied by the Supplier at any time;
  - (7) "GST" means GST within the meaning of the GST Act;
  - (8) "GST Act" means A New Tax System (Goods and Services Tax) Act 1999;
  - (9) "Licence" means the licence for the Customer to use the Licensed Products granted to the Customer under this Agreement;
  - (10) "Licence Fee" means the fee paid by the Customer to the Licensor for the rights and benefits provided under this Agreement;
  - (11) "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;
  - (12) "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;
  - (13) "Normal Business Hours" means from 9.00 am to 5.00 pm Western Standard Time on any Business Day;
  - (14) "Site" means the location or locations specified in the Schedule at which the Customer conducts business and the Software is installed and used on the specified machines;
  - (15) "Software" means the computer program specified in the Schedule and includes any Updates;
  - (16) "specified machines" means the computer workstations, as specified in the Schedule, which the Customer has designated for the Software to be installed upon;
  - (17) "Support Services" means the services provided by the Licensor to the Customer described in clause 7;
  - (18) "Term" means a period of one year from the Commencement Date;
  - (19) "Territory" means Australia; and
  - (20) "Updates" means any enhancement, modification or update of the Software and any associated instruction and installation materials provided by the Licensor under this Agreement but excludes new releases of the Software.
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## 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.

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## 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.

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## 2. Training and Accreditation as an APP

2.1 The Licensor agrees to provide the Customer with training in respect of the Software at the Customer's cost.

2.2 The Licensor reserves the right to vary, alter, amend or revise the training from time to time in accordance with the Licensor's requirements and the Customer can take no objection to any variation, alteration, amendment or review. Training will be conducted at a time and place nominated by the Licensor from time to time.

2.3 Upon the Customer completing training under this clause to the Licensor's satisfaction, the Customer will be accredited as an APP and be eligible to use the Software under the terms of this Agreement.

2.4 The Customer acknowledges that the Licensor provides no covenant guarantee or warranty that the Customer will satisfactorily complete the training or that any accreditation as an APP will be granted.

2.5 If the Customer does not complete training to the Licensor's satisfaction:

- (1) the Customer will return the Licensed Products;
- (2) the Customer's rights and obligations will end.

2.6 The Licensor may require the Customer to undergo further training from time to time at the Customer's cost to ensure the Customer complies with the Licensor's requirements in relation to operation of the Software and maintain accreditation as an APP.

2.7 The Licensor will determine the benefits of being an APP and will notify the Customer of such benefits from time to time.

### 3. Licence

Subject to clause 2 and payment of the Licence Fee in accordance with clause 4 and the terms of this Agreement, the Licensor grants to the Customer an irrevocable, non transferable non exclusive licence to:

- (1) use the Licensed Products at the Site; and
- (2) distribute the Software to the Customer's clients under clause 13, for the Term.

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### 4. Licence Fee

4.1 In consideration of the grant of licence under clause 3 and the benefits provided under this Agreement, the Customer must pay the Licence Fee to the Licensor in accordance with the terms specified by the Licensor.

4.2 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.

4.3 All taxes and fees referred to in clause 4.2, 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.

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

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### 5. Use

5.1 The Customer may install and use the Software only on the specified machines 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 relevant specified machine first. The Customer must not copy the Software, except for backup purposes for the computer that the Software is installed upon.

5.2 The Customer may request further copies of the Software for use on further machines and by its employees for the Customer's legitimate business purposes.

5.3 The Software may only be operated by individuals who have undergone training to the Licensor's satisfaction.

5.4 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.

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### 6. Updates

6.1 During the Term, the Licensor will provide the Customer with all the Updates developed by the Licensor from time to time within 21 days of their release by the Licensor.

6.2 The Licensor may develop and release the Updates at its discretion but will use its best endeavours to develop and release at least one Update every financial year.

6.3 Where the Licensor has released an Update:

- (1) the Licensor will deliver the Update at no additional charge to the Customer; and
- (2) the Customer must, if requested by the Licensor, return to the Licensor all copies of the Software or part thereof which have been superseded by the Update or otherwise deal with all such copies in accordance with the Licensor's directions.

6.4 For the purposes of the Licence, all Updates are considered to form part of the Software as a whole and the Licence will continue to apply in all respects to the Update.

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## 7. Support Services

7.1 The Licensor will provide the Customer with Support Services for the Term.

7.2 The Licensor will perform such services as it considers reasonable to ensure the Software remains in substantial conformity with the specifications contained in the Manual or in any documentation relating to the Software issued by the Licensor from time to time. The support may, at the sole option of the Licensor, take the form of:

- (1) telephone, fax or email service;
- (2) error correction by means of modem; or
- (3) other such services as the Licensor considers are effectively provided off-site.

7.3 The Support Services will be provided in response to a report by the Customer of a suspected error or defect in the Software.

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## 8. Exclusions

8.1 Support Services to be provided by the Licensor under this Agreement do not include:

- (1) correction of errors or defects caused by operation of the Software in a manner other than that currently specified by the Licensor;
- (2) correction of errors or defects caused by modification, revision, variation, translation or alteration of the Software not authorised by the Licensor;
- (3) correction of errors or defects caused by the use of the Software by a person not authorised by the Licensor;
- (4) correction of errors caused in whole or in part by the use of computer programs other than the Software;
- (5) training of operators of the Software;
- (6) rectification of operator errors;
- (7) rectification of errors caused by incorrect use of the Software;
- (8) rectification of errors caused by an equipment fault;
- (9) equipment maintenance;
- (10) diagnosis or rectification of faults not associated with the Software;
- (11) furnishing or maintenance of accessories, attachments, supplies, consumables or associated items, whether or not manufactured or distributed by the Licensor;
- (12) correction of errors arising directly or indirectly out of the Customer's failure to comply with this Agreement or any other agreement with the Licensor;
- (13) correction of errors or defects which are the subject of a warranty under another Agreement; or
- (14) the provisions of updates and new releases of the Software.

8.2 If the Customer requests, the Supplier may at its option provide any of the services referred to in clause 8.1. The Supplier may make an additional charge for providing such services.

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## 9. Distribution Rights

9.1 The Supplier grants to the Distributor the personal, non-transferable and non exclusive right and licence to distribute and sell the Software to the Customer's own clients on terms and conditions specified by the Licensor from time to time.

9.2 The Customer must not distribute the Software to any person:

- (1) unless that person has agreed to be bound by the terms and conditions of an End User Licence Agreement;
  - (2) outside the Territory;
  - (3) whom the Distributor knows or has reason to believe intends to licence the Software outside the Territory; or
  - (4) whom the Distributor knows or has reason to believe is or will act as a distributor, reseller or dealer.
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## 10. Property

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

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

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## 11. 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.

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## 12. Intellectual Property Indemnity

12.1 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.

12.2 In the event that 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.

12.3 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.
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## 13. Trade Secret, Security and Confidentiality

13.1 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.

13.2 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.

13.3 Without limiting the generality of clause 13.2, 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.

13.4 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.

13.5 Without limiting the generality of clause 21, the Customer acknowledges that the obligations and covenants set forth in this clause 13 will survive termination, for whatever reason, of the Agreement.

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## 14. 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.

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## 15. Warrant of Performance

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

15.2 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.

15.3 The Licensor warrants to the Customer but not to any assignee or any 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.

15.4 The warranty provided for under clause 15.3 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 Customer 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.

15.5 The warranty under clause 15.3 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 Customer may have which are provided by statute and which cannot be excluded.

15.6 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.

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## 16. Limitation of Liability

16.1 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 Customer by the Licensor's performance of its obligations under this Agreement.

16.2 Without limiting the generality of clause 16.1, 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.

16.3 Any term or condition to the contrary of this clause 16 which is implied by statute or common law is to the extent permitted by law expressly excluded.

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

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

## 17. 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 or except as expressly provided in this Agreement:

- (1) offer to sell, lease or sub-licence the Software;
- (2) copy nor permit copies to be made of the Licensed Products;
- (3) break or permit others to break any copy product code of the Software;
- (4) use or permit others to use the Licensed Products in a computer services bureau, network, time sharing, interactive cable television, multiple CPU or multiple user arrangement;
- (5) modify or alter the Licensed Products in any manner;
- (6) communicate or permit to be communicated the contents of the Licensed Products 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 Products;
- (8) make copies of the Licensed Products for purposes of incorporating any part of it into any other computer program not generated by the Software; and
- (9) not provide services by use of, promote or sell a software product that in the Licensor's reasonable opinion competes with the Software.

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## 18. Term and Renewal

18.1 The Customer rights under this Agreement are for one year from the Commencement Date and expire at the end of the Term.

18.2 The Customer may renew this Agreement for further periods each of one year from the end of the last period by:

- (1) giving written notice to the Licensor not less than one month from the end of the current term;
- (2) paying such fees as the Licensor nominates from time to time for renewal of the rights granted under this Agreement; and
- (3) if required by the Licensor, entering into the Licensor's then current version of APP Licence Agreement.

18.3 The Licensor may refuse to grant a renewal of this Agreement if the Customer:

- (1) has at any time been in default of its obligations under this Agreement and failed to rectify default within the period specified in a written notice served on the Customer requiring it to remedy such default; or
- (2) fails to satisfactorily complete any further training the Licensor specifies the Customer must undergo to maintain accreditation as an APP.

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## 19. 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 17;
- (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.

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## 20. 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.

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## 21. Effect of Termination

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

21.2 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.

21.3 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.

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## 22. Applicable Law

22.1 The Law of Western Australia governs this Agreement.

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

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## 23. Severability

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

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## 24. 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.

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## 25. Amendment or Variation

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