

**BACKGROUND**

- A. ValuePRO Software Pty Ltd (ACN 121 003 521) ("the Company") has the right to licence ValuePRO and provide services to customers relating to ValuePRO.
- B. The Customer wishes to utilise ValuePRO and engage the Company to provide these services.
- C. This Agreement records the arrangements between the Company and the Customer.

**THE TERMS AND CONDITIONS OF USE ARE AS FOLLOWS:****1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

In this Agreement, unless the contrary intention appears:

**"Additional Fee"** means a fee made in accordance with the terms of this Agreement at the rates as specified in the Company's standard fee schedule in effect from time to time as available on the Website;

**"Agreement"** means these general terms and conditions as may be amended from time to time;

**"Claim"** means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent;

**"Company"** means ValuePRO Software Pty Ltd (ACN 121 003 521) has the right to licence ValuePRO and provide services to customers relating to ValuePRO.

**"Customer"** means You, the user, as does any reference to **"You"** or **"Your"**;

**"Customer Data"** means data owned or supplied by the Customer and stored on our systems through the Customer's usage of ValuePRO;

**"Customisation"** means any amendments, additions, alterations, modifications, enhancements or other changes made to ValuePRO at the request of the Customer;

**"Customisation Fee"** means the fee charged for Customisation as specified from time to time on the Website and **"Customisation Fees"** shall have a corresponding meaning;

**"Default Interest Rate"** means the rate of 10% per annum calculated from the date payment is due to the date of actual payment;

**"Escrow Terms"** means the terms on which the source code of ValuePRO may be made available to the Customer, a copy of which is available on the Website;

**"Fees"** means the License Fee, the Subscription Fee and if applicable, the Customisation Fee and any Additional Fees;

**"Force Majeure"** means any act of God, fire earthquake, storm or flood or any other cause beyond the reasonable control of the party claiming the benefit of clause 20 and which that party is unable to overcome by the exercise of reasonable diligence and at a reasonable cost;

**"Government Authority"** means any local, State or Federal government, a Minister or government department of each of those governments, a corporation or authority constituted for a public purpose, the holder of an office for a public purpose, a local authority and any agent or employee of any of them;

**"Intellectual Property Rights"** means jointly and severally any Rights as they relate to copyright, trade mark, patents and any other intellectual property Rights that may arising in connection with this Agreement;

**"Invoice"** means an invoice rendered in accordance with clause 3;

**"License"** means the right to use ValuePRO granted by the Company under this Agreement;

**"License Fee"** means the up-front license fee, payable upon commencement of the License;

**"Log-in Information"** means, in combination, the user-name and password issued by the Company to the Customer in order for them to access ValuePRO;

**"Payment Date"** means the date by which the Fees must be paid by as specified in an Invoice and **"Payment Dates"** shall have a corresponding meaning;

**"Right"** includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action;

**"Subscription Fee"** means the fee for the continued use of ValuePRO, paid either monthly or yearly, at the rates as specified on the Website;

**"Support Services"** means the services offered to the Customer as outlined in clause 11;

**"Term"** means the period from the execution and/or acceptance of this Agreement by the Customer until validly terminated in accordance with clause 17;

**"ValuePRO"** means the ValuePRO real estate valuation software and services package including delivery of online valuations software services, support, hosting and upgrade services;

**"Website"** means the Company's website, being: <https://www.valuepro.com.au/>.

**1.2 Interpretation**

In the interpretation of this Agreement, unless the context or subject matter otherwise require:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;
- (d) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;

- (e) references to signature and signing include due execution of a document by a corporation or other relevant entity;
  - (f) references to months mean calendar months;
  - (g) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
  - (h) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
  - (i) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;
  - (j) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;
  - (k) each paragraph or sub-paragraph in a list is to be read independently from the others in the list;
  - (l) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
  - (m) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns; and
  - (n) the phrase "in writing" includes communication via any form of electronic text-based communication, including but not limited to e-mail, ValuePRO online request system, SMS, approved internet chat facilities, approved bulletin board services and other approved instant messaging systems.
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## 2. LICENCE

### 2.1 Grant of License

In consideration of payment of the Fees, the Company, for the Term and on the terms of this Agreement hereby grants to the Customer a non-exclusive, non-transferable licence to use ValuePRO.

### 2.2 Limitations of License

The License granted pursuant to clause 2.1 is on the following conditions:

- (a) the Customer may only use ValuePRO in accordance with this Agreement;
  - (b) except as specified to the contrary in this Agreement, the Company shall not be obliged to provide advice, training, error-correction, modifications, updates, new releases or enhancements of ValuePRO;
  - (c) the Customer shall not, nor shall it permit others to sublicense, rent, lease, or distribute ValuePRO to any third party;
  - (d) except as expressly permitted in this Agreement, the Customer shall not, and agrees not to make any attempt to:
    - (i) decompile, reverse engineer, disassemble or otherwise derive the source code or database structures from any component of ValuePRO;
    - (ii) modify, enhance, translate, alter, tamper with, upgrade or create derivative works of ValuePRO; or
    - (iii) strip out or alter any trademark, service mark, copyright, patent, trade secret, ownership or any other proprietary or intellectual property notices, legends, warnings, markings or indications on or with any component of ValuePRO or Documentation; and
  - (e) this Agreement does not transfer to the Customer any ownership rights in ValuePRO, the Customer is only acquiring a right to use ValuePRO in accordance with and subject to the provisions of this Agreement.
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## 3. FEES

### 3.1 License Fee

Upon or prior to the commencement of the License (or as otherwise authorised or approved by the Company), the Customer shall pay the Company the License Fee.

### 3.2 Subscription Fee

The Customer must pay to the Company, on or by the applicable Payment Dates, the Subscription Fee.

### 3.3 Customisation Fee

If applicable, the Customer must pay to the Company, on or by the applicable Payment Dates, the Customisation Fees.

### 3.4 Other Fees

The Company shall be entitled to charge an Additional Fee for any other facilities provided or services performed in connection with this Agreement (including, without limitation, facsimile, SMS or postage charges).

### 3.5 Invoices

As each Fee arises, the Company will promptly deliver an Invoice to the Customer setting out the amounts due to the Company by the Customer and the relevant Payment Date. The Company will ensure the Invoice:

- (a) contains sufficient detail to enable the Customer to identify the subject of the Fee, the period in which such services were supplied and the amount payable in respect of them;
- (b) is addressed in accordance with the Customer's requirements as advised to the Company in writing; and
- (c) complies with the GST Law.

### 3.6 Disputed Charge

If the Customer disputes the whole or any portion of the amount claimed in an Invoice submitted by the Company, the Customer must:

- (a) pay the portion of the amount stated in the Invoice which is not in dispute; and

- (b) notify the Company in writing within seven (7) days of receipt of the Invoice of the reasons for disputing the remainder of the Invoice.

If it is determined or resolved that some or all of the amount in dispute ought properly to have been paid at the time it was first invoiced, then the Customer shall pay the amount finally resolved together with interest at the Default Interest Rate.

### **3.7 GST and other amounts**

Unless otherwise expressly stated, the Fees are exclusive of GST, other taxes, duties and charges imposed or levied in Australia or overseas in connection with the License, such amounts being payable by the Customer. If GST is payable in respect of any Fees, then the amounts charged pursuant to this Agreement are to be increased so that the Company receives an amount (an "Increased Amount") which, after subtracting the GST on the Increased Amount, results in the Company retaining an amount equal to the original Fee after payment of the GST. Without limiting the foregoing, the Customer shall be liable for any new taxes, duties or charges imposed subsequent to the commencement of this Agreement.

### **3.8 Non-Payment**

Without limiting the generality of clause 17, should the Customer fail to pay any Fees by the appropriate Payment Date, the Company may:

- (a) discontinue or suspend the Customer's access to ValuePRO;
- (b) alter the functionality or usability of ValuePRO for the Customer; or
- (c) otherwise limit the Customer's access to ValuePRO;

and may charge an Additional Fee for the reinstatement of such access or functionality.

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## **4. SUITABILITY**

### **4.1 Responsibility**

The Customer is solely responsible for determining the suitability of ValuePRO for its particular needs and for the results obtained.

### **4.2 Warranties**

By entering into this Agreement the Customer warrants to the Company that it has (and will in future have):

- (i) determined its needs;
- (ii) evaluated ValuePRO's capabilities; and
- (iii) satisfied itself as to its suitability for the Customer's purpose before entering into this Agreement;

### **4.3 Representations**

The Company makes no representation that ValuePRO is suitable for the Customer's application or that it conforms to or satisfies any Commonwealth, state or local laws.

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## **5. PROVISION OF VALUEPRO**

### **5.1 Access**

The Company, in accordance with the terms and conditions of this Agreement shall provide access to ValuePRO to the Customer.

### **5.2 Log-In Information**

- (a) The Company shall provide the Customer with Log-in Information required for access to ValuePRO.
- (b) The Customer is responsible for maintaining the secrecy and confidentiality of the Log-in Information.
- (c) The Customer must not disclose to any other person, corporation, entity or organisation any Log-in Information whether in use or not.

### **5.3 Directions**

Throughout the Term of this Agreement the Customer must comply with all reasonable and lawful directions that the Company may issue in its discretion from time to time with respect to the use of and access to ValuePRO.

### **5.4 Proper Use**

The Customer must not knowingly use the access nor permit any other party to access ValuePRO for any purpose or activity of an illegal or fraudulent nature and must not use the service to contribute or aid the commission of a crime or to infringe upon the rights of a third party.

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## **6. DATA IMPORTATION**

### **6.1 Initial Importation**

The Company shall, upon commencement of the License, import historical Customer Data, in the formats approved by the Company, (the "Approved Formats") free of charge.

### **6.2 Additional Formats**

The Company may, at the request of the Customer and at the Company's sole discretion, import data in formats other than the Approved Formats and may charge the Customer an Additional Fee for providing such a service.

### **6.3 Further Importation**

The Company may, at the request of the Customer during the Term and at the Company's sole discretion, complete further importations of Customer Data either in the Approved Formats or otherwise and may charge the Customer an Additional Fee for providing such a service.

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**7. CUSTOMISATION****7.1 Availability**

The Company may, at the request of the Customer, perform Customisation of ValuePRO for the Customisation Fee.

**7.2 Intellectual Property**

The Customer hereby acknowledges and agrees that the benefit, Right, title and interest in all Intellectual Property Rights in relation to any Customisation by the Company remain the property of and vest absolutely in the Company unless otherwise agreed in writing signed by the Company and the Customer.

**7.3 Further Use**

The Customer hereby acknowledges and agrees that the Company may include any Customisation in future editions of ValuePRO and provide them to other customers and users of ValuePRO without the consent or authorisation of the Customer or any payment or refund to the Customer whatsoever.

**7.4 Payment**

The Customisation Fee must be paid by the Customer in accordance with clause 3.

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**8. VARIATION****8.1 Amendment**

The Company reserves the right to (at its sole discretion) amend, repair or vary particular aspects of ValuePRO, information and facilities from time to time.

**8.2 Functionality**

Changes made pursuant to clause 8.1 may be made notwithstanding that such amendment, repair or variation results in a variation, amendment or limitation of the functionality of ValuePRO.

**8.3 Best Endeavours**

The Company shall use its best endeavours to avoid, but shall not be liable for, any reduction in the quality, speed, or performance of ValuePRO as a result of variations made pursuant to this clause.

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**9. DATA****9.1 Provision of Information**

Through the usage of ValuePRO, Customers will provide and have stored on the Company's servers, Customer Data.

**9.2 Security**

The Company shall use all reasonable endeavours to ensure that the Company's servants, agents and employees provide a secure environment for the any Customer Data held on its systems as a result of use of ValuePRO. The Customer however acknowledges that no information which is available on the internet is completely secure and agrees that the Company will not be liable for any loss or damage or to any extent should such security measures be overcome or breached and the Customer hereby indemnifies the Company in respect of any such Claims.

**9.3 Third Party Infringement**

The Customer shall not knowingly do any act or thing in relation to data which would infringe any party's copyright or intellectual property rights and shall be responsible for obtaining consent, approval or license from the holders of any intellectual property rights required to enable the Customer to deal with any relevant data or to do any act or thing in relation to those intellectual property rights.

**9.4 Use of Customer Data**

The Customer grants and the Company reserves the right to use, test, manipulate or put to any other application the Customer Data for the purpose of improving or marketing ValuePRO.

**9.5 Limitations**

The Company will not, subject to clause 9.4, use the Customer Data for any other purpose without the consent in writing of the Customer.

**9.6 Confidentiality**

In making use of Customer Data in accordance with clause 9.4, the Company will use all reasonable endeavours to preserve the confidentiality of the Customer Data, including the amendment or alteration of information to cause it to be unidentifiable.

**9.7 Other Customer Data**

The Customer acknowledges that through the use of ValuePRO it may exchange or otherwise receive or disclose Customer Data to and from other customers. The Customer acknowledges and agrees that the Company has no control over any or all such information and makes no warranty or guarantee as to its accuracy or otherwise appropriateness of the data and all such data is used completely at the Customer's own risk.

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**10. SERVICE AVAILABILITY****10.1 Availability**

The Company shall use all reasonable endeavours to provide ValuePRO on a continuous basis during the Term, provided however that the Company may, without notice, suspend all or part of ValuePRO immediately, including where:

- (a) there is a malfunction or breakdown of any of the Company's equipment or if the Company is required to undertake the repair, maintenance or service of any part of ValuePRO;

- (b) there is an electrical storm, tempest, electrical short circuit, power failure, telecommunications failure or fault;
- (c) there is an industrial dispute or lockout;
- (d) it is reasonably required to reduce or prevent fraud or interference with ValuePRO;
- (e) the Company is required to comply with an order, instruction or request of government, or other such competent body;
- (f) the Customer has failed to pay Fees that are due and payable to the Company;
- (g) there is an act of God, war, government action, or any other circumstance beyond the Company's reasonable control occurs.

## 10.2 Downtime

The Customer acknowledges and agrees that access to ValuePRO is reliant upon various factors outside the control of the Company, including, without limitation, the Customer's internet service provider, the Company's hosting and web server and other factors which may impact upon the delivery of ValuePRO to the Customer via the internet. While the Company shall use all reasonable endeavours to ensure the Customer has continuous access to ValuePRO, the Company shall not be liable to the Customer or any other person for any Claim or to any other extent for loss or damage caused by such factors and the Customer hereby indemnifies the Company in respect of any or all such Claims.

## 10.3 Viability

The Company may discontinue or suspend access to ValuePRO if:

- (a) the ability to provide ValuePRO is restricted or altered in such a way that the Company considers it is impractical, impossible or not commercially viable to continue to provide ValuePRO; or
- (b) a claim is made that:
  - (i) alleges that the continued provision of ValuePRO infringes the rights of any person;
  - (ii) exposes the Company to liability to any third party; or
  - (iii) exposes the Company to liability prosecution for an offence or liability to a statutory penalty.

## 10.4 Notice

In the event that access to ValuePRO is discontinued in accordance with clause 10.3, the Company will endeavour to provide the Customer with prior written notice where it is reasonable and practicable in the Company's opinion to do so.

## 10.5 Notice of Maintenance

The Company will use its reasonable endeavours to, except in emergency situations:

- (a) provide the Customer with seven (7) days notice of any scheduled maintenance of ValuePRO; and
- (b) undertake any scheduled maintenance between the hours of 7pm and 7am AEST on weekdays or on weekends.

## 10.6 Loss of Access

The Customer shall have no claim against the Company in respect of loss of access or functionality to ValuePRO referred to in this clause whether such claim lies in contract, tort or otherwise (including negligence) for any loss or damage howsoever arising.

## 10.7 Credit for Unavailability

Despite the terms of clause 10.6, if, due to the negligent act or omission of the Company, the Customer is unable to access ValuePRO in accordance with this Agreement, the Company may, at its sole discretion, issue the Customer with an amount of credit calculated with reference to the time that ValuePRO was not accessible as a percentage of the total hours ValuePRO would otherwise have been available.

## 10.8 Malfunctions

The Company does not warrant that ValuePRO is or will be completely error free.

# 11. SUPPORT AND MAINTENANCE

## 11.1 Provision of Support Services

The Company will provide Support Services as it considers reasonable to ensure the Customer is able to maintain access and use of ValuePRO. Such Support Services may, at the sole discretion of the Company, take the form of:

- (a) telephone advice;
- (b) Support Services via the internet;
- (c) error correction by way of updates; and
- (d) such other services as the Company considers are effectively provided online.

## 11.2 Hours for Support Services

The Company shall provide the Support Services during the hours specified on the Website and does not warrant that it will be capable of promptly receiving, processing or otherwise acting upon a request for support which is made outside those hours.

## 11.3 Exclusions

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

- (a) Support Services to be provided on-site at the premises of the Customer;
- (b) modifications, amendments, additions, alterations, enhancements or other changes to the functionality of ValuePRO;
- (c) correction of errors or defects caused by operation of ValuePRO in a manner other than that currently specified by the Company;

- (d) correction of errors resulting from data migration or transformation, whether performed by the Company or third parties;
- (e) correction of errors or defects caused by modification, revision, variation, translation or alteration of ValuePRO not authorised by the Company;
- (f) correction of errors caused in whole or in part by the use of computer programs other than ValuePRO;
- (g) correction of errors caused by the failure of the Customer to provide suitably qualified and adequately trained operating and programming staff for the operation of ValuePRO;
- (h) training of operating or programming staff;
- (i) rectification of operator errors;
- (j) rectification of errors caused by incorrect use of ValuePRO;
- (k) rectification of errors caused by the Customer's equipment failure;
- (l) the Customer's equipment maintenance;
- (m) diagnosis or rectification of faults not associated with ValuePRO;
- (n) installation of software;
- (o) third party materials;
- (p) rectification of errors in the Customer Data;
- (q) furnishing or maintenance of accessories, attachments, supplies, consumables or associated items, whether or not manufactured or distributed by the Company;
- (r) correction of errors arising directly or indirectly out of the Customer's failure to comply with this Agreement or any other agreement with the Company; or
- (s) correction of errors or defects which are the subject of a warranty under another agreement.

#### 11.4 Additional Services

If the Customer so requests, the Company may, at its option, provide any of the Support Services referred to in sub clause 11.3 and may charge an Additional Fee for providing such services.

## 12. BACK UPS

### 12.1 Back Up

- (a) The Customer acknowledges and agrees that it is solely responsibility for undertaking back-ups of all Customer Data and other associated information and materials.
- (b) Despite clause 12.1(a), the Company, will, from time to time, undertake back-ups of Customer Data stored on the Company servers.
- (c) In the event of a backup needing to be restored, the Company will restore the most recent back-up as provided by the Customer, or failing that, the most recent back-up made by the Company.
- (d) The Company shall not, in any circumstance, be responsible or liable for any loss of Customer Data or any consequential loss or other damage suffered by the Customer's failure to comply with its obligations in this clause or in respect of any data which is otherwise lost or corrupted.
- (e) Should the Customer terminate this Agreement, the Company will supply an electronic copy of the Customer Data in a format determined by the Company.

## 13. PRIVACY POLICY

### 13.1 Commitment to Privacy

The Company is committed to protecting Customer privacy. We understand that Customers of ValuePRO are concerned about their privacy, and the confidentiality and security of any information that is provided. The Company undertakes to comply with the terms of our privacy policy which can be accessed at the following address:

<https://www. .com.au/privacy>

## 14. CUSTOMER'S FACILITIES

### 14.1 Requirements

The Customer shall be responsible for providing its own internal facilities (including terminal, software, modem and telecommunications facilities) necessary for using ValuePRO.

### 14.2 Assistance by the Company

The Company shall, upon request from the Customer, supply such information and assistance as is reasonably required by the Customer to enable the Customer to prepare and install its own access facilities. This may require the Customer to pay the Company an Additional Fee.

### 14.3 Customer's Responsibility

Notwithstanding clause 14.2, the Company accepts no responsibility for any deficiency in the Customer's access facilities.

## 15. COMPLIANCE WITH LAW

**15.1 No Obligation**

The Company is under no obligation to the Customer under this Agreement or otherwise if and to the extent the Customer's accessing of ValuePRO constitutes a breach of any relevant law or regulation.

**15.2 Delivery of Data**

The Company is under no obligation to refrain from delivering the Customer Data or related data, documentation or records into the custody of a duly authorised law enforcement officer or government representative, officer or agency or from providing such persons or instrumentalities with access to the Customer Data or related data, documentation or records if the Company receives a request or demand for such information.

**15.3 Indemnities**

The Customer shall, to the extent permissible by law, indemnify the Company against all costs and liability incurred as a result of:

- (a) its possession, processing, use or other handling of the Customer Data or related data, documentation or records; and
  - (b) delivering materials or information to a third party in accordance with clause 15.2.
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**16. COMPANY EMPLOYEES****16.1 Recruitment**

In exchange for the benefits to be derived under this Agreement, the Customer shall not, without the signed, written permission of the Company, during the Term or after termination of this Agreement for a period of two (2) years, canvas, solicit, interfere with or entice away any person who at any time during the Term was an employee, servant or agent of the Company.

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**17. TERMINATION****17.1 Right to Terminate**

Without limiting the generality of any other clause in this Agreement, the Company may terminate this Agreement immediately by notice in writing if:

- (a) the Customer is in breach of any term of this Agreement and such breach is not remedied within fourteen (14) days of receipt of notice of breach from the Company;
- (b) the Customer is in breach of any term of this Agreement, such breach being, in the opinion of the Company, incapable of being remedied;
- (c) the Customer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
- (d) the Customer, (if a partnership), dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- (e) the Customer, (if a natural person), dies;
- (f) the Customer ceases or threatens to cease conducting its business in the normal manner;

or in any event, upon fourteen (14) days' notice.

**17.2 Additional Rights**

If notice is given to the Customer by the Company pursuant to clause 17.1, the Company may, in addition to terminating this Agreement:

- (a) retain any moneys paid by the Customer;
- (b) charge a reasonable sum for work performed in respect of which work no sum has been previously charged;
- (c) be regarded as discharged from any further obligations under this Agreement;
- (d) exercise a lien over the Customer's Data until all Fees payable by the Customer are paid; and
- (e) pursue any additional or alternative remedies provided by law.

**17.3 Customer Rights**

The Customer may terminate this agreement at any time by giving to the Company one hundred and eighty (180) days notice in writing and by paying all outstanding Fees and all other amounts owing and all Fees and other amounts that will become owing up to and including the termination date.

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**18. ESCROW****18.1 Availability**

At the request of the Customer, the Company shall provide the ValuePRO source code to a third party to be released to the Customer subject to the Escrow Terms. The Customer acknowledges that to have the ValuePRO source code provided in escrow, it must execute and agree to the Escrow Terms and pay the prescribed Additional Fee.

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**19. LIMITS OF LIABILITY****19.1 Exclusion of liability**

To the maximum extent permitted by law, the Company will not be liable for any ordinary, incidental, consequential or special loss or damage (including but not limited to loss of profits, loss of data and loss of personnel) arising out of this Agreement or

the use of ValuePRO even if appraised of the likelihood of such loss or damage occurring.

### 19.2 Limit of liability

- (a) Except as expressly provided by this Agreement, ValuePRO is provided on an "as is" basis without any representation, warranty or condition, whether express or implied, statutory, out of a course of dealing or usage, trade or otherwise including any implied warranty or condition of merchantability quality or fitness for any particular purpose or use.
- (b) The Company does not warrant that ValuePRO will be free of defect, uninterrupted, accurate, complete, current, stable, bug free, error free or available at any time in respect of its operation.
- (c) The Company shall have no responsibility or liability whatsoever as a consequence of any Customer Data, lost, destroyed or damaged by ValuePRO.
- (d) In no event will the Company's liability arising out of or relating to this Agreement exceed the amount of the Fees paid by the Customer for the use of ValuePRO.

### 19.3 Exclusion of other Terms

- (a) All other conditions, warranties, representations, liabilities and obligations, including any conditions or warranties as to merchantability, fitness for purpose or correspondence with description are hereby excluded to the extent permitted by law.
- (b) Subject to any Commonwealth or state law that limits the Company's right to restrict its liability or implies any warranty or condition or imposes any obligation upon the Company which cannot be excluded, restricted or modified, and to the extent that the Company may limit its liability under such law, the Company's liability for breach of any such warranty, condition or obligation will be limited, at its option, to:
  - (i) the replacement of software;
  - (ii) the redelivery of the Services;
  - (iii) the repair of ValuePRO to render it compliant with the specifications; or
  - (iv) the refunding of the Fees paid in respect of ValuePRO giving rise to the liability.

### 19.4 Good Data Processing

The Customer acknowledges and agrees good data processing procedures dictate that any software be thoroughly tested with non critical data before implementing it in a business environment and undertakes to implement such procedures before using ValuePRO. The Company shall under no circumstances be liable for the consequences of any failure by the Customer to comply with this practice.

### 19.5 Survival

The provisions of this clause 19 shall survive the termination of this Agreement.

## 20. FORCE MAJEURE

### 20.1 Delay

Neither party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to Force Majeure.

### 20.2 Suspension of Obligations

If a delay or failure of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended.

### 20.3 Termination

If a delay or failure by a party to perform its obligations due to Force Majeure exceeds thirty (30) days, either party may immediately terminate this Agreement on providing notice in writing to the other party.

### 20.4 Refund of Monies

If this Agreement is terminated pursuant to this clause, the Company shall refund monies previously paid by the Customer pursuant to this Agreement for goods or services that have not been provided by the Company to the Customer.

## 21. PROPER LAW, JURISDICTION

### 21.1 Choice of law

This Agreement is governed by and construed in accordance with the laws of the State of Queensland.

### 21.2 Jurisdiction

Actions, suits or proceedings relating in any way to this Agreement or documents or dealings contemplated by it, may be instituted, heard and determined in a court of competent jurisdiction in Queensland.

### 21.3 Submission to jurisdiction

Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland for the purpose of any such action, suit or proceeding.

### 21.4 Service of process

A party may by notice appoint another person at a specified address in Queensland to receive service of process in connection with proceedings and process served on that person is taken to be served on the party making the appointment.



**22. GENERAL****22.1 Variations**

The terms of this Agreement shall be variable by the Company upon notice in writing outlining the changes to be made, and:

- (a) the effect of the variation, if any, upon the Fees; and
- (b) the impact of the variation on the obligations of either party under this Agreement;

**22.2 Entire Agreement**

This Agreement constitutes the entire Agreement between the Parties and supersedes all prior representations, Agreements, statements and understandings, whether verbal or in writing.

**22.3 No Reliance**

Subject to clause 22.4, the Customer warrants that it has not relied on any representation made by the Company which has not been stated expressly in this Agreement or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by the Company.

**22.4 Independent Verification**

The Customer acknowledges that to the extent the Company has made any representation which is not otherwise expressly stated in this Agreement, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.

**22.5 Assignment**

- (a) The Company may, upon notice in writing to the Customer, assign or otherwise transfer the benefit of all or any part of this Agreement to any other person or entity.
- (b) The benefit of this Agreement shall not be assigned by the Customer without the Company's signed consent in writing.
- (c) The Company may consent to the assignment or novation of this Agreement by the Customer subject to such conditions as it, in its sole discretion chooses to impose.

**22.6 Waiver**

- (a) No Right under this Agreement shall be deemed to be waived except by notice in writing.
- (b) A waiver made by a party pursuant to clause (a) will not prejudice its Rights in respect of any subsequent breach of the Agreement by the other.
- (c) Subject to clause (a), any failure by a party to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by it to the other, will not be construed as a waiver of its Rights under this Agreement.

**22.7 Severability**

This Agreement shall, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect, but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision shall, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it shall be deemed to be void and severable and the remaining provisions of this Agreement shall not in any way be affected or impaired and shall continue notwithstanding that illegality, invalidity or unenforceability.

**22.8 Company's rights**

Any express statement of a Right of the Company under this Agreement is without prejudice to any other Right of the Company expressly stated in this Agreement or existing at law.

**22.9 Survival**

- (a) Subject to any provision to the contrary, this Agreement shall continue for the benefit of and be binding upon the parties and their successors, trustees, permitted assigns or receivers but shall not continue for the benefit of any other persons.
- (b) The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration of the Agreement.

**22.10 Time**

Time shall be of the essence of this Agreement.

**CLICK & ACCEPT EXECUTION**

I have carefully read and understood these terms and conditions. I have had the opportunity to obtain independent advice in relation to the meaning and effect of the agreement terms.

I acknowledge and understand that by clicking in the box below that I have accepted and am bound by terms as if they bore my signature or seal.

I understand and acknowledge that if I do not agree nor accept the provisions of the Agreement, then I simply click the box entitled "I Do Not Accept and Disagree" in which case I have no right whatsoever to use and/or operate ValuePRO.