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**WARNING: PERMISSION TO ACCESS WEWORKBOOK IS CONDITIONAL UPON YOU, THE CUSTOMER, AGREEING TO THE TERMS OF THIS AGREEMENT SET OUT BELOW.**

DO NOT ACCESS WEWORKBOOK UNTIL YOU HAVE READ AND ACCEPTED ALL THE TERMS OF THIS AGREEMENT AND WISH TO GAIN ACCESS TO WEWORKBOOK. ACCEPTANCE SHALL BIND YOU AND ALL OF YOUR EMPLOYEES TO THE TERMS OF THIS AGREEMENT. YOU WILL BE DEEMED TO HAVE ACCEPTED THE TERMS OF THIS AGREEMENT ON ACCESS TO WEWORKBOOK.

IF YOU DO NOT WISH TO ACCEPT THE TERMS OF THIS AGREEMENT, DO NOT ACCESS WEWORKBOOK AND ANY ANNUAL FEES YOU MAY HAVE PAID WILL BE REFUNDED TO YOU.

### **1. Background**

1.1 DNA Evolution Pty Ltd (DNA Evolution) has secured a multi-user license and distribution rights to a training schedule management system software product known as WEWORKBOOK.

1.2 DNA Evolution provides its customers access to the WEWORKBOOK application through remote internet connection to its computer facilities.

1.3 The Customer has sought access to DNA Evolution's computer facilities and to utilise the WEWORKBOOK application in its business and DNA Evolution will provide such access and rights on the terms of this Agreement.

### **2. Access to WEWORKBOOK**

2.1 DNA Evolution will provide the Customer with access to the System and the right to utilise WEWORKBOOK on the terms of this Agreement. The Customer will access the System by utilising the Access Devices for Registered Users only.

2.2 If the Customer wishes to access WEWORKBOOK by more than the number of Registered Users, it may do so upon receipt of written consent from DNA Evolution and upon payment of additional Charges as set out in Schedule 1.

### **3. Customer's Facilities**

3.1 The Customer will be responsible for providing the Customer's Facilities and Access Devices as specified by DNA Evolution and will provide DNA Evolution with access to the Customer's Facilities as required pursuant to this Agreement.

3.2 DNA Evolution shall supply such information and assistance as is reasonably required by the Customer to enable the Customer to provide the Customer's Facilities.

3.3 The Customer will comply with any directions and specifications issued by DNA Evolution and ensure a continuous and adequate electrical supply and communications access and maintain appropriate environmental conditions for the Customer's Facilities.

### **4. Charges**

4.1 The Customer will pay the Charges at the rate and in the manner specified in Schedule 1, including:-

(a) the Installation Charge to gain access to WEWORKBOOK;

(b) the Annual Access Fee for continued access and Support; and

(c) for other Services as specified in Schedule 1 or as requested by the Customer at the Hourly Rate.

4.2 DNA Evolution reserves the right to review the Charges and the Hourly Rate:-

(a) every 2 years based on the higher of the increase in CPI, the direct cost of providing access to WEWORKBOOK or Support or the commercial price of comparable applications or hourly rates;

(b) on release of a new version of WEWORKBOOK, which includes new or enhanced functionality.

4.3 Charges are GST exclusive and the Customer is responsible for all GST. Charges are payable by the Customer within 14 days of receipt of a Tax Invoice from DNA Evolution without deduction or set-off.

### **5. Customer Data**

5.1 DNA Evolution acknowledges that the Customer Data remains the property of the Customer and will make backup copies of the Customer Data on a regular basis but will not be responsible for any loss or cost of reproduction of Customer Data.

5.2 DNA Evolution shall on reasonable notice make the Customer Data and related data, documentation

or records maintained on behalf of the Customer available for inspection by the Customer or the Customer's auditors.

5.3 The Customer may be required to pay DNA Evolution an additional Charge in respect of additional services provided by DNA Evolution pursuant to this clause at the Hourly Rate.

5.4 The Customer is responsible for the accuracy and completeness of the Customer Data entered by its Registered Users and as processed by WEWORKBOOK and/or stored on the System.

5.5 DNA Evolution 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 WEWORKBOOK, the System or the Customer Data or related data, documentation or records, if DNA Evolution receives a request or demand for such information.

5.6 The Customer shall indemnify DNA Evolution against all costs and liability incurred as a result of DNA Evolution's possession of the Customer Data or incurred as a result of delivering such information to any persons or instrumentalities under the preceding sub-clause.

## **6. Documentation and Training**

6.1 DNA Evolution shall provide the Customer with such number of copies of the Documentation as designated by DNA Evolution for training purposes and to enable the Registered Users to access the System and use WEWORKBOOK. The Customer acknowledges that the Documentation may not be copied, modified or used in any way not contemplated or expressly authorised by this Agreement.

6.2 DNA Evolution will provide initial web-based training on the use of WEWORKBOOK on the Customer's Facilities.

6.3 The Customer undertakes the following obligations:

(a) To ensure that its employees, sub-contractors and other agents who have authorised access to WEWORKBOOK have read the Documentation and receive adequate training on accessing the System and use of WEWORKBOOK; and

(b) Not to provide access to the System, use of WEWORKBOOK, or access to the Documentation to any person other than those authorised persons with proper training referred to in the above paragraphs.

6.4 DNA Evolution reserves the right to charge for additional copies of the Documentation or training or excessive use of Support if in the opinion of DNA Evolution the Customer has failed to ensure that its employees, sub-contractors and other agents have been provided with access to the Documentation or received adequate training.

## **7. Support**

7.1 During the term of this Agreement and subject to the payment of the Charges, DNA Evolution will provide Support, including:

(a) email and telephone support on technical issues relating to access to the System and use of WEWORKBOOK during the hours 9am and 5pm (Central Standard Time) Monday to Friday;

(b) access to any updated versions of WEWORKBOOK; and

(c) on-site support at the Customer's site if required by the Customer at the Hourly Rate.

7.2 DNA Evolution may in its absolute discretion, upon the Customer's request provide additional services not usually or normally provided under this Agreement for an additional Charge at the Hourly Rate.

7.3 The Customer will reimburse DNA Evolution at cost for the cost of any reasonable travel and accommodation expenses incurred in providing the Services that may be provided under this Agreement.

## **8. Customer Modifications**

The Customer may request modifications to be made to WEWORKBOOK to add or improve the functionality of WEWORKBOOK. If agreed to by DNA Evolution, the Customer will pay for such Services provided by DNA Evolution at the Hourly Rate or as otherwise agreed by DNA Evolution and the Customer.

## **9. System Specifications**

DNA Evolution may substitute the System or any component of the System prior to or during the period of this Agreement without consultation with the Customer if, in the reasonable opinion of DNA Evolution, such substitution will not cause a material adverse effect on the Customer's access to the System or use of WEWORKBOOK.

## **10. Warranty**

10.1 DNA Evolution warrants that:

- (a) it has the right to grant access to the System and use of WEWORKBOOK;
- (b) WEWORKBOOK will operate in accordance with the Documentation; and
- (c) it will provide the Services with due care and skill.

10.2 DNA Evolution cannot and does not warrant that:

- (a) WEWORKBOOK is bug-free or does not contain non-material errors;
- (b) access to the System and WEWORKBOOK will be continuous or uninterrupted; and
- (c) WEWORKBOOK complies with all applicable laws.

10.3 The Customer acknowledges that it has exercised its independent judgment in acquiring WEWORKBOOK and has not relied on any representation made by DNA Evolution, which has not been stated expressly in this Agreement or upon any descriptions or illustrations or specifications contained in the Documentation or in any other document including catalogues or publicity material produced by DNA Evolution

## 11. Intellectual Property

11.1 The Customer acknowledges that:-

- (a) WEWORKBOOK and Documentation is the subject of copyright and which is the sole and exclusive property of DNA Evolution; and
- (b) DNA Evolution remains the sole owner or licensee of WEWORKBOOK and all Intellectual Property Rights associated with WEWORKBOOK.

11.2 The Customer shall not during or any time after the expiry or termination of this Agreement permit any act which infringes DNA Evolution or any third parties' Intellectual Property Rights and, without limiting the generality of the foregoing, the Customer specifically acknowledges that it may not copy WEWORKBOOK or any part of it except as otherwise expressly authorised by this Agreement.

11.3 The Documentation may not be copied under any circumstances. Additional copies of the Documentation may be acquired from DNA Evolution.

11.4 The Customer shall indemnify DNA Evolution fully against all liabilities, costs and expenses that DNA Evolution may incur to a third party as a result of the Customer's breach of the Intellectual Property Rights provisions of this Agreement.

## 12. Term and Termination

12.1 This Agreement will commence on payment of the Charges payable pursuant to this Agreement including the Access Fee.

12.2 Subject to payment of the Access Fees on each anniversary of Commencement, this Agreement will continue for subsequent 12 months periods until determined pursuant to this Agreement.

12.3 This Agreement may be terminated in the following circumstances:

- (a) by the Customer, on a minimum 3 month's written notice expiring on any anniversary of Commencement;
- (b) by DNA Evolution, on a minimum 3 month's written notice by DNA Evolution, expiring on any anniversary of Commencement, that it will no longer provide Support for any version of WEWORKBOOK provided that such notice will not be given earlier than 2 years after Commencement;
- (c) by DNA Evolution, if the Customer is in breach of any term of this Agreement and fails to remedy such breach within such reasonable period based on the nature of the breach, as set out in a written notice to be given by DNA Evolution to the Customer setting out the nature of the breach;
- (d) by DNA Evolution, if the Customer:
  - (i) being a corporation, becomes the subject of any form of insolvency administration;
  - (ii) being a firm or partnership, is dissolved;
  - (iii) ceases or threatens to cease to carry on its business in the normal manner;
  - (iv) destroys or damages WEWORKBOOK and Documentation for any reason; or
  - (v) sell its business without the prior written consent of DNA Evolution (such consent not to be unreasonably withheld).

12.4 On termination of this Agreement but subject to the following sub-clauses on the transfer of the Customer Data:

- (a) the Customer will immediately cease to access or use WEWORKBOOK;
- (b) the Customer or its representative shall return all copies of the Documentation to DNA Evolution;
- (c) DNA Evolution may retain any monies paid by the Customer;
- (d) DNA Evolution will be regarded as discharged from any further obligations under this Agreement.

12.5 On termination of this Agreement, DNA Evolution will provide reasonable assistance to the

Customer to transfer its Customer Data from DNA Evolution to the Customer or the Customer's new service provider and will continue to provide access to the System and use of WEWORKBOOK pursuant to this Agreement until the date all Customer Data is transferred and the Customer is no longer using WEWORKBOOK but is under no obligation to do so after 30 days of termination.

12.6 The transfer of the Customer Data from the System shall be provided at the Customer's sole cost and expense and the Customer shall pay DNA Evolution such additional Charges for the provision of those services in accordance with DNA Evolution's current terms and conditions, including applicable Hourly Rates.

12.7 Termination pursuant to this clause shall not affect any rights or remedies that DNA Evolution may have otherwise under this Agreement or at law.

12.8 All provisions of this Agreement regarding confidentiality, copyright, limitations of actions and liability, title, use, copying or disclosure of WEWORKBOOK, assignment, use of the Customer's name and on transfer of the Customer Data shall survive the expiration or termination of this Agreement, regardless of the cause or reason for expiration or termination.

### **13. Force Majeure**

13.1 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.

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

13.3 If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 60 days, either party may immediately terminate this Agreement on providing notice in writing to the other party.

### **14. Risk and Losses**

14.1 DNA Evolution will be under no liability to the Customer in respect of any consequential or indirect cost, loss or damage which may be suffered or incurred or which may arise directly or indirectly in respect of the access to the System or use of WEWORKBOOK pursuant to this Agreement or in respect of a failure or omission on DNA Evolution's part to comply with its obligations or any warranty under this Agreement.

14.2 Notwithstanding any other term of this Agreement, other than the sub-clause 3 below, DNA Evolution's total liability, in aggregate to the Customer for all claims by or on behalf of the Customer in respect of any circumstances in any way connected with this Agreement is limited to the amount paid by the Customer for Annual Access Fees during the preceding 12 month period.

14.3 This clause does not apply to any liability which cannot by law be excluded, in which case the liability of DNA Evolution shall be limited to the extent permitted by law.

14.4 The Customer will at all times indemnify and hold harmless DNA Evolution and its officers, employees and agents ("those indemnified") from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified where such loss or liability was caused by:

(a) A breach by the Customer, its employees, sub-contractors and/or agents of its obligations under this Agreement; or

(b) Any wilful, unlawful or negligent act or omission of the Customer, its employees, sub-contractors and/or agents,

including, without limitation, any loss or liability caused by any breach of the privacy laws or any other legislative or regulatory compliance issues and any infection of or distribution of viruses to the System.

### **15. Confidentiality**

15.1 A party shall not, without the prior written consent of the other party, disclose the other party's Confidential Information unless compelled by law.

15.2 Each party shall take all reasonable steps to ensure that its employees, ex-employees and agents, and any sub-contractors engaged for the purposes of this Agreement, do not make public or disclose the other party's Confidential Information.

15.3 Notwithstanding any other provision of this clause, DNA Evolution may:

(a) collect data in respect of the Customer's use of WEWORKBOOK (including reports, but excluding Confidential Information relating to the identity of the Customer or any clients of the Customer) to generate diagnostics for DNA Evolution's and comparative assessment of all of DNA Evolution's customer's use of WEWORKBOOK;

(b) disclose the terms of this Agreement to its related companies, solicitors, auditors, insurers or accountants, and shall ensure that every person to whom that disclosure is made uses that information

solely for the purposes of advising or reporting to DNA Evolution;

(c) include the Customer's name in any complete or partial listing of DNA Evolution's customers for its own marketing purposes.

15.4 DNA Evolution and the Customer shall use their respective reasonable endeavours to comply with the National Privacy Principles in relation to any personal information relating to the clients of the Customer.

## 16. Assignment

16.1 The benefit of this Agreement shall not be dealt with in any way by the Customer (whether by assignment, sub-licensing or otherwise) without DNA Evolution's written consent, which consent is not to be unreasonably withheld.

16.2 DNA Evolution may assign the benefit of this Agreement or sub-contract the performance of any part of this Agreement to a third party.

## 17. Waiver

Failure or neglect by either party to enforce at any time any provisions of this Agreement shall not be construed or deemed to be a waiver of that party's rights under this Agreement.

## 18. Governing law

This Agreement shall be governed by and construed according to the law of South Australia and the parties submit to the jurisdiction of the Courts of that State.

## 19. Definitions

In this Agreement:

**Access Devices** means the terminals, modem, broadband facilities, internet protocol address, other equipment or devices and computer software and/or programs necessary for the Customer to access WEWORKBOOK on the System at the Site, which are approved by DNA Evolution and must comply with or exceed the minimum requirements specified by DNA Evolution;

**Access Fee** means that part of the Charges as specified in Schedule 1 payable by the Customer to DNA Evolution that relates to the continuing access to and Support of the Application by DNA Evolution;

**Application** means the computer software application known as WEWORKBOOK referred to in clause 1.1 above and more particularly is a training schedule management system for use in the financial planning industry;

**Charges** means the Charges payable by the Customer to DNA Evolution as specified in Schedule 1;

**Commencement** means the date on which payment of the Access Fee is first made; **Confidential Information** means the confidential information of a party that relates to the subject matter of this Agreement and includes information relating to the terms upon which WEWORKBOOK is being supplied pursuant to this Agreement and any personal information relating to the identity of any client of the Customer;

**Customer Data** means data supplied by the Customer to DNA Evolution and stored on the System pursuant to this Agreement or data which may otherwise be generated, compiled, arranged or developed using WEWORKBOOK by either party pursuant to this Agreement.

**Customer's Facilities** means the facilities necessary to access the System and use WEWORKBOOK and includes the Access Devices, hardware, software, and printers which must comply with or exceed the minimum requirements specified by DNA Evolution;

**Documentation** means the operational and training manuals provided by DNA Evolution in relation to access to the System and use of WEWORKBOOK;

**Force Majeure** means a circumstance beyond the reasonable control of the parties, which results in a party being unable to observe or perform on time an obligation under this Agreement;

**Hourly Rate** means DNA Evolution's standard hourly rate as specified in Schedule 1, as varied or otherwise published by DNA Evolution from time to time;

**Intellectual Property Rights** means copyright, trade mark, design, patent, semiconductor or circuit layout rights or any other intellectual property rights;

**Registered Users** means the users able to access the System and use WEWORKBOOK at any one time as specified in Schedule 1 or determined from the Charges;

**Services** means the services to be provided by DNA Evolution to the Customer pursuant to this Agreement, including:-

(a) implementation and training in the access to the System and use by the Customer of WEWORKBOOK;

(b) additional services provided at the request of the Customer; and

(c) services on termination or expiration of this Agreement.

**Site** means the location from which the System operates and WEWORKBOOK is to be accessed by the

Customer;

**Support** includes:-

(a) the provision of upgrades of WEWORKBOOK but does not extend to new functionality of WEWORKBOOK; and

(b) the services referred to in clause 7;

**System** means DNA Evolution's computer facilities on which WEWORKBOOK is installed and is to be accessed by the Customer pursuant to this Agreement.

**SCHEDULE 1**

**CHARGES**

**Please note: All charges listed are in Australian Dollars and are exclusive of Australian Goods and Services Tax (GST), where applicable.**

**1. The following Charges are payable by the Customer to DNA Evolution (ex GST):**

(a) Configuration, Access Fees and other Charges	Frequency	Unit Price (AUD\$) (ex GST)
<b>Charges</b>		
<b>Initial Access &amp; Setup Charge</b>	<b>Once</b>	<b>\$500</b>
<b>Access Fee (per user)</b>	<b>Monthly</b>	<b>\$50</b>
Training Charge (online)	FREE	FREE
Data Import Service (per 100 records or part count thereof)	Once	\$90