

Concepts Rural Suite Software Licence & Support Agreement

IMPORTANT: Before you install or use this Software please carefully read this software licence and support agreement ("**Agreement**"). This is a legal agreement between you and Concepts Rural Solutions Limited ("**Concepts**"). By clicking on the "I Agree" button you agree to the conditions below and this Agreement becomes binding. This Agreement applies to all Software and services that Concepts supplies or makes available to you in relation to the Concepts Rural Suite Software (except as expressly agreed otherwise). If you do not accept all the conditions of this Agreement, return the program to the company you purchased it from within 30 days of purchase for a full refund of the fees you paid for the Software.

1. DEFINITIONS

"**Intellectual Property**" means copyright, trade marks, patents, designs, business, product and domain names, logos, ideas, concepts, know-how, rights in software or databases, trade secrets and all other intellectual property rights or interests, whether or not registered, in any jurisdiction.

"**Software**" means (a) the Concepts Rural Suite software including the Concepts Dairy, Concepts Livestock, Concepts Cropping and Concepts Horticulture software products and any handheld versions of the same; (b) all new versions, releases, updates, and bug fixes to that software; and (c) all related documentation or files provided by Concepts.

"**Use**" means to access, install, download, copy or otherwise use the functionality of the object code version of the Software.

2. LICENCE RIGHTS

2.1 **General.** As long as you comply with this Agreement and have paid the relevant fee, Concepts grants you a non-exclusive, non-transferable licence to Use the Software in accordance with this Agreement.

2.2 **Use on one computer.** You may install and Use the Software on one computer only, for Use on that computer only, unless and to the extent you are entitled to Use the Software on another computer under a Secondary Licence or a Handheld Licence.

2.3 **Registration.** You may be required to register your copy of the Software before Use. On receipt of your registration details Concepts will issue you with a licence code to enable you to Use, for the relevant term, those parts of the Software for which you properly registered. The Software will operate only with the licence code and on the computer that you registered the Software on. If you wish to Use the Software on another computer (for example, if you are upgrading your computer) please contact Concepts. Concepts, in its complete discretion, may provide replacement licence codes.

2.4 **Use by Others.** You may permit your employees and contractors (but not your clients) to Use the Software on your behalf. You agree to supervise and control Use of the Software and will ensure that any persons permitted by you to Use the Software also comply with the terms of this Agreement. You acknowledge and agree that you remain liable for any breach of this Agreement by any such person.

2.5 **Perpetual Licence.** If you have purchased a Perpetual Licence the following apply:

- (a) You may Use only the Software for which you have paid the relevant licence or Support fee ("**Licensed Products**"). In order to Use additional software products Concepts may require you to purchase and install the latest version of the Software.
- (b) You may create and Use only one database.
- (c) The Licensed Products may be Used only for your internal business purposes.
- (d) The term of the licence is perpetual.
- (e) If you have purchased a licence for a handheld version of the Licensed Products ("**Handheld Licence**") or a licence that will allow you to Use the Licensed Products on an additional computer ("**Secondary Licence**") you may only Use that Software on one handheld or additional computer (as the case may be), in relation to the database in sub-clause (b) and subject at all times to sub-clauses (a), (c) and (d).

2.6 **Annual Licence.** If you have purchased an Annual Licence the following apply:

- (a) You may Use the Software for your client's business purposes, but you may not provide your clients access to the Software via the internet or otherwise.

- (b) The fees that you pay entitle you to Use the Software for one year, or longer if you pay the relevant renewal fee. Upon expiry of that period your Use of the Software will be limited and you will only be permitted to Use the Software in read-only mode.

2.7 **Trial Licence.** If you are Using a Trial Licence the Software may be Used only for a set period and only for the purposes of trialling the Software. The Software may have limited functionality.

3. LICENCE RESTRICTIONS

3.1 **Transfer.** Subject to clause 2.4, you may not hire out, lease, lend, distribute, resell, sell on, sublicense, make subject to a security interest, or otherwise transfer, provide or make available to any person all or any portion of the Software (including any previous versions of the Software).

3.2 **Modification and decompilation.** You may not modify, create works based on, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of all or any portion of the Software except to the extent expressly permitted by applicable law.

3.3 **Internal use only.** Subject to 2.6(a), you may not Use the Software to provide any services to a third party unless you are specifically licensed by Concepts in writing to do so.

3.4 **Additional Terms:** You must comply with any other restrictions or responsibilities related to the Software detailed on Concept's website or otherwise supplied by Concepts with the Software.

3.5 **TurboPower software.** The Software contains TurboPower software (Abbrevia, FlashFiler, Orpheus, SysTools) which is subject to the Mozilla Public License Version 1.1 ("**MPL**"). The source code of that TurboPower software is available at <http://sourceforge.net> under the terms of the MPL. You can read the MPL at <http://www.mozilla.org/MPL/>. Concepts has not modified the TurboPower software. The terms of this Agreement (including the warranty, support, and liability obligations) are offered by Concepts alone.

4. INTELLECTUAL PROPERTY

All Intellectual Property in the Software, and all copies and derivative works of the same, are, and shall remain, the sole and exclusive property of Concepts and/or its licensors (as the case may be). Other than the licence granted in clause 2, you obtain no rights or interests in or to the Software or such copies or derivative works. Despite any other provision of this Agreement, you may not use any of Concepts trademarks, business, product or domain names, or logos for any purpose without first obtaining Concepts' written consent to such use. The Software contains the proprietary information of Concepts and you may not disclose the Software, or any part of it, to any third party without first obtaining Concepts' written consent to such disclosure.

5. WARRANTIES

5.1 **Third party IP rights.** Concepts warrants that your Use of the Software in accordance with this Agreement will not infringe the intellectual property rights of any third party. You must promptly notify Concepts if anyone claims against you that the Software infringes intellectual property rights.

5.2 **Performance.** Concepts warrants that the Software will perform substantially in accordance with the user manual published by Concepts for a period of 90 days from the date the relevant software product was first registered ("**Warranty Period**"). To avoid doubt, any Software (that Concepts may supply you with) that modifies or replaces the software product you first installed is not covered by this warranty, even if the software product you first installed was licensed under a different agreement. If, within the Warranty Period, you notify Concepts in writing of any defect in the Software which causes it to fail to function substantially in

accordance with the user manual then, provided that the defect is not caused by any other person's software, product or services, or your negligence, misuse, or failure to comply with this Agreement and you provide all information that may be necessary to assist Concepts in resolving the defect, Concepts shall, at its option, repair or replace the Software, or provide you with a refund of the fees paid for the affected software product(s). This is your sole right and remedy in relation to any defect in the Software.

6. DISCLAIMER

- 6.1 **Errors.** Concepts does not warrant that the Software will be uninterrupted or error-free, or that any errors can or will be corrected.
- 6.2 **Warranties excluded.** Except as set out in this Agreement, all warranties, conditions, representations or terms, express or implied, whether by statute, common law, custom, usage or otherwise as to any matters are excluded to the fullest extent allowed by law, including any warranties as to non-infringement, satisfactory quality or fitness for any particular purpose. You acknowledge that you are acquiring the Software for the purposes of a business and that the Consumer Guarantees Act 1993 does not apply to this Agreement.
- 6.3 **Australia.** If you acquired the Software in Australia, then despite any other provision of this Agreement, where any Australian Act implies any term into this Agreement, and that Act avoids or prohibits provisions in a contract excluding or modifying such term, that term shall be deemed to be included in this Agreement, but Concepts' liability for breach of that term shall be limited in one or more of the ways (at Concepts' option) permitted by section 68A(1) of the Trade Practices Act 1974 (Cth).
- 6.4 **Third party products.** Concepts will not be liable for any faults and/or errors in any data or in any product that it has not created other than the Software. You will contact the relevant third-party supplier for all matters regarding such data or products.
- 6.5 **Backups and security.** Concepts will use reasonable endeavours to avoid losing or damaging your data. However, Concepts is not liable for any loss or damage, or unauthorised access to any of your data (even if Concepts provides backup services or functionality). You must maintain your own backup data necessary to quickly and accurately replace any of your data that is lost or damaged for any reason.

7. TERMINATION

- 7.1 **Termination.** If you are in breach of any of the provisions of this Agreement, Concepts may terminate all or any part of this Agreement with immediate effect. After such termination you must delete all copies of the Software held by or through you. You may terminate this Agreement by destroying or returning all copies of the Software held by or through you, and notifying Concepts in writing that you have done so.
- 7.2 **Effect of Termination.** Termination or cancellation of this Agreement shall not:
- relieve either party from any right, liability, or claim that has accrued before the date of termination or cancellation; and
 - affect the provisions of this Agreement which expressly, or by their nature, survive termination or cancellation (including clauses 3, 4, 6, 7, 8, and 10).

8. LIMITATION OF LIABILITY

In no event will Concepts be liable to you for any consequential, indirect or incidental damages, or any lost profit, savings or data, even if Concepts has been advised of the possibility of such loss or damage. Concepts' aggregate liability under or in connection with this Agreement will be limited to the licence fee you paid for the Software. The limitations and exclusions of liability in this Agreement shall apply however liability arises, whether in contract, tort (including negligence), breach of statutory duty or otherwise. This clause is also for the benefit of, and enforceable by, Concepts' officers, employees and related companies (as defined in section 2 of the Companies Act 1993).

9. MAINTENANCE AND SUPPORT

- 9.1 This Agreement applies to any maintenance and support services Concepts may provide or make available to you ("**Support**"). Support options and terms are available on Concepts' website ("**Support Terms**"). Concepts may change the Support Terms at any time by publishing new terms on its website. If there is any inconsistency between this Agreement and the Support Terms, this Agreement shall take priority unless expressly agreed otherwise in writing by Concepts.
- 9.2 To be entitled to Support you must have:
- provided your contact details to Concepts;
 - paid the relevant Support fee (including any catch-up fee); and
 - purchased (where required) and be Using the most recent version of the Software and any updates made available to you (including as are available for download from Concepts' website).
- 9.3 You are entitled only to new versions, releases, updates, and bug fixes, in accordance with the Support Terms, that you have paid for and that have been made generally available by Concepts.
- 9.4 **Catch-up fee.** If you have not paid for continuous periods of Support, Concepts may require you to pay a catch-up fee before making further periods of Support available to you.
- 9.5 **No obligation to provide Support.** Concepts is not obliged to provide you with Support if the problem you are experiencing is caused by loss of your software programs or loss of data, any other person's software, product or services, or your negligence, misuse, or failure to comply with this Agreement.
- 9.6 **Termination of Support.** Concepts may terminate any or all parts of Support at any time. Concepts will endeavour to contact you prior to Support being terminated. If you have paid in advance, Concepts will refund, pro rata, that part of the Support fee relevant to the unused period of Support.

10. GENERAL PROVISIONS

- 10.1 **Amendments.** This Agreement is valid for the version of the Software you purchased and later versions. This Agreement may be amended or replaced by terms and conditions provided by Concepts and made available to you (including by posting on Concepts website or by inclusion with any later versions or updates of the Software that are made available to you). All amendments or supplements to this Agreement must be made by Concepts in writing.
- 10.2 **Entire agreement.** This Agreement contains the entire understanding between you and Concepts concerning, and supersedes all previous agreements and understandings between you and Concepts on, its subject matter.
- 10.3 **Waiver.** A failure or delay by either you or Concepts to enforce this Agreement will not be taken as a waiver of rights under this Agreement. Any waiver must be in writing and signed.
- 10.4 **No action after 2 years.** You may bring no action arising out of this Agreement more than 2 years after you become aware, or reasonably ought to have become aware, of the circumstances giving rise to the action.
- 10.5 **Assignment.** Concepts may assign or subcontract any or all of its rights and/or obligations under this Agreement.
- 10.6 **Severability.** If at any time any provision of this Agreement is or becomes illegal or unenforceable, neither the legal validity nor enforceability of the remaining provisions shall in any way be affected or impaired.
- 10.7 **Force majeure.** Concepts is not responsible for any failure to perform its duties or obligations that has been caused or contributed to by anything that is beyond its reasonable control.
- 10.8 **Interpretation.** In this Agreement, words in the singular include the plural and vice versa; headings are for ease of reference only and shall not affect the interpretation of this Agreement; where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word have corresponding meanings; and "including" and similar words do not imply any limitations.
- 10.9 **Law.** This Agreement is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts.