

Broker Forms Licence Agreement

NOTICE TO ALL USERS:

PLEASE READ THIS CONTRACT CAREFULLY. BY CLICKING THE ACCEPT BUTTON, YOU (EITHER AN INDIVIDUAL OR A SINGLE ENTITY) AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN CONTRACT SIGNED BY YOU. DO NOT PROCEED IF YOU DO NOT AGREE.

Welcome to Broker Forms. We provide You with access to Our online fillable insurance underwriting Fact Find, Portfolio Review and Claim Report Form Service, applicable to various classes of insurance (the “**Broker Forms Software**”).

Once You complete a Fact Find or Claim Report Form by entering your clients’ information, We store that information safely and securely. You can then access Client information at any time and it can be provided to multiple insurers and / or underwriting agencies to request risk insurance terms and conditions, or to report a claim to the insurer.

Your completed and stored Fact Find Forms can be re-used by You to record policy changes during the policy year and for an annual review of Your clients’ insurance portfolio.

This Agreement explains Our obligations as a service provider, and Your obligations as a customer.

Before You can download and use the Broker Forms Software (the “**Software**”), we require You to read and agree to be bound by our Broker Forms Licence Agreement (the “**Licence Agreement**”). This Licence Agreement is binding on any use of the Software and it applies to You and Your Registered Users from the time that We provide You with access to the Software.

This Licence Agreement is made between You (the “**Licensee**”) and Broker Forms Pty Ltd ACN 613 281 931 (the “**Licensor**”). By registering to use the Software and by clicking on the “I/We accept the terms and conditions of the Broker Forms Licence Agreement”, You acknowledge that You have read and understood the terms of this Licence Agreement and that You agree to its terms and to be legally bound by it.

INTERPRETATION

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

A. The singular includes the plural, and the converse also applies.

E. A gender includes all genders.

F. Certain terms are defined in a schedule to this Agreement. If a word or phrase is defined, its other grammatical forms have the corresponding meaning.

G. A reference to a clause or schedule is a reference to a clause of or a schedule to this Agreement.

H. A reference to an agreement or document (including, without limitation a reference to this Agreement) is to the agreement or document amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.

I. A reference to a party to this Agreement or another agreement or document includes the party's successors and permitted substitutes and permitted assigns (and where applicable, the party's legal personal representatives).

J. A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

K. A reference to conduct includes an omission, statement or undertaking, whether or not in writing.

L. A reference to an agreement includes any undertaking, deed, agreement, and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing, and any certificate, notice, instrument or document of any kind.

M. Mentioning anything after include, includes or including does not limit what else might be included.

N. A reference to dollars and \$'s is to Australian currency.

1. Commencement of Agreement

The Broker Forms Licence Agreement will commence on the date that:

- (a) You click the "Accept" button on this page; or
- (b) a Licence Agreement is executed by all Parties; or
- (c) the date on which You gain access to the Software on the Broker Forms Website,

whichever occurs first ("the **Commencement Date**").

2. Licence

2.1 This Licence Agreement outlines the terms and conditions for the use of the Software.

2.2 You must not and agree that neither You nor Your Registered Users will sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Software in any way or reverse engineer or access the Software in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Software, (c) copy any ideas, features, functions or graphics of the Software, or for any other reason.

2.3 Upon payment of the Licence Fee (or, if you have been granted a "30 Day Free Trial" which we will grant or not grant to You in our absolute discretion, from the Commencement Date), You as Licensee are granted a non-exclusive, non-transferable, limited license (the **Licence**) allowing You and your Registered Users to access and use the Software from a computer, device, workstation terminal, or other electronic device including a network server subject to the terms and conditions of this Agreement.

2.4 If the Licence Fee is not paid within 30 days of the due date following the issue of a tax invoice, without further notice We may suspend the Licence.

2.5 We warrant that We have the sole right and authority to grant this Licence to You and that there are no existing restrictions or constraints in relation to such grant.

2.6 You warrant that You and all Your Registered Users hold (and You and Your Registered Users undertake to continue to hold for the duration of this Agreement) all the necessary registrations and insurances to act as insurance brokers and insurance broker authorised representatives in Your and Your Registered Users' Australian State or Territory.

2.7 You warrant that no authorisation, consent, approval or licence of, or filing or registration with, any court or government department, commission agency or instrumentality is or will be necessary or required for Us to enter into and give effect to this Agreement.

2.8 You warrant that You are (and You undertake to remain for the duration of this Agreement) registered with an internet services provider with sufficient access to access the Broker Forms Website and to use the Software, and you acknowledge that You (and not We) are solely responsible for maintaining such internet access and the cost of the same.

2.9 Except to the extent as may be necessary to use the Software, You will keep confidential all details of the function, purpose and/or operation of the Software and of the contents of any manuals and other explanatory material supplied by Us.

2.10 You acknowledge and agree that other than the Licence nothing in this Agreement is intended to, nor shall it be construed to give the You or Your Registered Users any intellectual property rights or other rights in any trademarks, know-how, business names, software, Forms or other materials provided by Us under this Agreement.

2.11 You are expressly prohibited from granting security over Your Software License or any class intellectual property rights to any other party.

3. Hardware Specifications

3.1 You agree and acknowledge that the Software must be used in conjunction with hardware of equal or higher specifications than the minimum specifications set out on the Broker Forms Website at www.brokerforms.com.au.

3.2 We warrant that during the Initial and Subsequent Terms of this Agreement, the Software will operate substantially in accordance with this Agreement when used in conjunction with the hardware and operating system specified on the Broker Forms Website at www.brokerforms.com.au.

4. Licence Fees

4.1 We will charge you a Licence Fee calculated on the basis of Your number of Registered Staff User Seats. The minimum number of Staff User Seats is one.

4.2 The Licence Fees per Registered Staff User Seat are as per Schedule 1 of this Agreement provided that if We have granted You a "30 Day Free Trial" there will

be no Licence Fees payable for the period beginning on the first day of the Initial Term and ending 30 days thereafter.

4.3 Licence Fees will be invoiced by Us and paid by You as follows:

a. We will calculate your Licence Fee yearly and it will be due and payable by You to Us yearly in advance provided that if We have granted You a “30 Day Free Trial”, your Licence Fee for the Initial Term will be due and payable by You to Us one month after the first day of the Initial Term.

b. You may request to pay Your Licence Fee in 12 equal monthly instalments (or 11 equal monthly instalments if You were granted a “30 Day Free Trial”) through a finance facility by arrangement with Us and Our nominated finance facility, and we will not unreasonably refuse such a request.

c. You must pay the Licence Fees within 30 days of receiving an invoice for payment.

4.4 The Licence Fee per Registered Staff User Seat will be updated and may increase on July 1 each year. In the Initial Term of this Agreement, You will be charged the Licence Fee applicable on the first day of the Initial Term of this Agreement. In Subsequent Terms of this Agreement, you will be charged the Licence Fee that is current at the Anniversary Date.

4.5 You must advise us of how many Registered Staff User Seats you require in order to use the Licence. You may increase the number of Registered Staff User Seats during either the Initial Term or a Subsequent Term of this Agreement by notifying us via the Broker Forms Website of such increase. We will then increase your annual Licence Fee on a pro rata basis for the duration of the term of the Agreement and apply such increase to Subsequent Terms in accordance with clause 4.6 of this Agreement.

4.6 You may not decrease the number of Registered Staff User Seats during the Initial Term or a Subsequent Term of this Agreement but you may decrease the number of Registered Staff User Seats on the next Anniversary Date upon renewal of the Agreement by providing no less than one month’s notice of such decrease to Us prior to the final day of the current term of the Agreement. If you do not advise us of a decrease in the number of Registered Staff User Seats that you require at least one month prior to the Anniversary Date, your Licence Fee will be calculated in accordance with the number of Registered Staff User Seats as at one month prior to the Anniversary Date.

4.7. If You do not wish to continue Your access and use of the Software beyond the Initial Term, You must give us notice of no less than one month prior to the next Anniversary Date that you wish to terminate the Agreement and if you do not give us such notice, the Agreement will renew for a Subsequent Term of one year and will renew yearly on the Anniversary Date until You provide us with such notice.

5. Liability

5.1 You acknowledge that We make no undertakings that insurers will provide their quotation to You or Your clients using a Broker Form quotation request by email or that insurers will upload their quotation electronically to You or Your clients.

5.2 We shall not be responsible for any unauthorised access to, alteration of, or loss of Your transmission or data, any material, information or data sent or

received by You or insurers, regardless of whether the data is actually received by You or any transaction entered into by You or Your failure to abide by this Agreement. While we undertake to retain copies of information and data entered into the Software (pursuant to clause 12) You agree that it is Your sole responsibility to retain copies of all Forms generated by your use of the Software and to keep Your own accurate records of such information, data and Forms generated by Your use of the Software.

5.3 Notwithstanding any provision contained in this Agreement We shall not be liable to the extent that performance of any terms or provisions of this Agreement is delayed or prevented by revolution or other civil disorders; wars; acts or enemies; strikes; any act of terrorism; lack of available resources from persons other than parties to this Agreement; labour disputes; electrical equipment or availability failure; fires; floods; act of God; or federal, state or municipal action, statute, ordinance or regulation.

5.4 Except as set out herein all implied conditions, warranties and rights are excluded from this Agreement. Where laws imply conditions or warranties or give other rights in respect of this Agreement, Our liability for any breach of such a condition, warranty or right will (but only to the extent permitted by law) be limited:

(a) in the case of goods supplied, to the replacement or repair of the goods or the supply of equivalent goods, the payment of the cost of repairing or replacing the goods or of acquiring equivalent goods;

(b) in the case of services supplied, to the supplying of the services again or the payment of the reasonable cost of having the services supplied again.

5.5 We will not be liable to You, Your Registered Users or any third parties for any delay or failure to access our Website or the Software due to matters outside of our reasonable control and to the extent that any loss or damage was reasonably foreseeable, and in any event, to the extent not prohibited by law, Our aggregate liability will not exceed the amount actually paid by You in the 30 day period immediately preceding the event giving rise to the applicable claim.

5.6 You agree to defend and hold Us (and Our parents, subsidiaries, affiliates, officers, directors, shareholders, employees, attorneys, and agents) harmless from and indemnify Us against any and all claims, demands, actions, proceedings, costs (including reasonable legal fees), damages, losses, liabilities, and expenses (including solicitor fees and costs) arising out of or in connection with Your (including Your Registered Users') misuse of the Software, violation of any law or third party rights, or breach of this Agreement. Acts and omissions of Your Registered Users are deemed to be acts of You as Licensee and You are responsible for ensuring that Your Registered Users comply with the terms of this Agreement to the extent that such terms are relevant to their use of the Software.

5.7 We undertake to cooperate as fully as reasonably required in the defence of or in any claim made against You by third parties in relation to the Licence.

5.8 We do not warrant that the files, information, services or contents provided by Us or by insurers will be accurate, error free or suitable for any particular purpose, and nor do we warrant that You will be able to access the Broker Forms Website or the Broker Forms in the event of matters outside of Our reasonable control not limited to but including any internet and computer system failures. Under no

circumstances shall We be liable for any loss, damages or injury (including without limitation any loss of profits in direct consequential or incidental loss, damages or injury) arising from the use of the Software, the information obtained from it or quotes provided by insurers.

5.9 You acknowledge: (i) that We may source third party data from reputable information providers; (ii) We do not warrant the accuracy or completeness of the third party data; (iii) that We are not liable for errors, omissions or changes without notice to components of the third party data.

6. Dispute Resolution

6.1 A party must not start court proceedings (except proceedings seeking interlocutory relief) unless it has complied with this clause.

6.2 A party claiming any dispute, difference of opinion or material question arising out of or in connection with this Agreement has arisen (a *Dispute*) must give the other party notice of the details of the Dispute (a *Dispute Notice*)

6.3 The parties must attempt to resolve any Dispute by negotiations using the following escalation procedure:

(a) When a Dispute Notice is given, each party's representative must first attempt to resolve the dispute; and

(b) If they cannot resolve the dispute within five business days after the Dispute Notice is given, each part must refer the Dispute to their Chief Executive Officer who must then attempt to resolve it.

6.4 If the parties cannot resolve the Dispute within ten (10) business days from when the dispute notice is given the parties agree to try and resolve the Dispute by other means such as expert determination, mediation or arbitration.

6.5 If a party breaches the procedures outlined in this clause in relation to a Dispute, the other party need not comply with this clause in relation to the Dispute.

6.6 Each party must continue to perform its obligations in this Agreement, pending the resolution of a Dispute or for ten (10) business days, whichever occurs first.

6.7 The dispute resolution procedure in this clause, does not affect the Our right to terminate the Agreement in accordance with Clause 7.

6.8 The Parties must bear their own costs of complying with this clause.

7. Termination

7.1 We may terminate this Agreement with 30 days written notice.

7.2 You may give notice that you wish to terminate this Agreement effective on the next Anniversary Date for any reason by written notice no less than 30 days prior to the next Anniversary Date. If We have granted you a "30 Day Free Trial" You may also terminate this Agreement at any time from the first day of the Initial Term until the thirtieth day of the Initial Term.

7.3 Either party may terminate this Agreement if the other party fails to perform any material obligation under this Agreement (including the obligation to pay amounts due) and does not rectify such failure within 30 days after written notice of such failure.

7.4 Upon termination of this Agreement for any reason, We will immediately cancel Your access to the Software unless terminated in accordance with clause 7.2 in which case we will cancel Your access to the Software on the next Anniversary Date.

7.5 All obligations with respect to the following survive the termination of this Agreement for any reason:

- (a) use and non-disclosure of Confidential Information and Privacy obligations;
- (b) liability and indemnification (including but not limited to clause 5);
- (c) obligations to make payments of amounts that become due under this Agreement before termination of this Agreement in accordance with this clause 7;
- (d) prohibition against commercial exploitation by You of the Software that is prohibited by this Agreement (including but not limited to subclause 2.2);
- (e) GST (clause 13).

8. Confidential Information

8.1 Each Party acknowledges that:

- (a) The Confidential Information of the other Party is valuable;
- (b) Disclosure of a Party's Confidential Information by the other Party in breach of this clause causes damage to the other Party;
- (c) [The Broker Forms Privacy Policy](#) forms a part of this Agreement.

8.2 Each Party must:

- (a) Keep the confidential information of the other Party confidential; and
- (b) Safeguard the other Party's Confidential Information in the same manner it does its own.

8.3 The Parties may only:

- (a) Use Confidential Information for the purposes of this Agreement, which purpose includes but is not limited to You being able to access Your Client Information so that Your Client Information can be provided via the Software to multiple insurers and / or underwriting agencies to request risk insurance terms and conditions, or to report a claim to the insurer;
- (b) Disclose Confidential Information to its personnel if:
 - 1. They must know for the purposes of this Agreement (but then only to that extent); and
 - 2. They are subject to obligations of confidentiality.

8.4 On request by the Party disclosing the Confidential Information ('Disclosing Party'), the Party receiving the Confidential Information ('Receiving Party') must, subject to the record keeping requirements of relevant laws, and the retention by You of documentation necessary to use the Software during the term of the License:

- (a) Promptly return or destroy (at the option of the Disclosing Party) the Confidential Information and any copy of it; and

(b) If required by the Disclosing Party, certify in writing that it has returned or destroyed all the Confidential Information.

8.5 Before any disclosure as required by law the Receiving Party must:

(a) As soon as is practicable notify the Disclosing Party giving full details of the circumstances of the proposed disclosure and of the relevant information proposed to be disclosed;

(b) (to the maximum extent permitted by law) give the Disclosing Party a reasonable opportunity in a court of law (or other appropriate body) to:

1. Challenge the proposed disclosure;
2. Challenge the obligation of the Receiving Party to provide the Confidential Information, or to otherwise prevent or restrict that disclosure;
3. Secure an order or other ruling (for example that the disclosure should only be made on a confidential basis) to protect and preserve the confidentiality of the relevant information;

(c) Ensure that only so much of the Confidential Information that is legally compelled to be disclosed is actually disclosed; and

(d) Take all reasonable steps to preserve the confidentiality of the information being disclosed.

9. Ownership

All intellectual property in the Software, and in all systems and associated literature and manuals, including moral rights, remains the absolute and sole property of the Licensors, and You acknowledges that the Software is licensed for the specific purposes of this Agreement and does not convey any rights of ownership in or to the Software.

10. Assignment

Your rights and obligations under this Agreement are not assignable and may not be novated (as applicable) without Our prior written consent which will not be unreasonably withheld, excluding the granting of security as specified in subclause 2.11. We may assign or novate our rights and obligations (as applicable) under this Agreement.

11. Notices and Changes of Address

All notices and communications to be sent by one party to the other pursuant to or under this Agreement shall be sent to the address shown in this Agreement or to such other address as may be from time to time notified by one party to the other which may include email addresses.

12. Privacy

12.1 We will collect information from You and third parties. We undertake to keep all information collected by Us including but not limited to information entered into a Form absolutely confidential (subject to clause 8).

12.2 We will retain information entered into a Form by You for the duration of this Agreement and for a maximum period of 12 months after the termination of this Agreement as a backup service to You.

12.3 We will handle Your private information in accordance with relevant laws. Our privacy policy is available to the Licensee on Our Website.

13. GST

13.1 If GST is payable on a taxable supply made under, in reference to or in connection with this Agreement, the party providing the consideration for that taxable supply must also pay the GST amount as additional considerations. This clause does not apply to the extent that the consideration for the taxable supply is expressly stated to be GST inclusive.

13.2 Any reference in the calculation of consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a party, must exclude the amount of any input tax credit entitlement of that party in relation to the relevant cost, expense and other liability. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the consideration must be provided.

14. Governing Law

This Agreement and all disputes arising under it shall be governed by the laws of South Australia and each party submits to the non exclusive jurisdiction of the courts in that state.

15. Severability

If any part of this Agreement should be declared invalid, void or unenforceable, such part or parts shall be severed from the remainder of the Agreement which will remain in full force and effect. The invalid, void or unenforceable provisions shall be replaced by provisions which correspond to or come as close as possible to the economic or intended purpose of the void provision.

16. Force Majeure

Neither party is responsible for any delay in its performance or its failure to perform due to causes beyond its reasonable control.

17. Waiver

The failure of a party to pursue its rights with respect to a default or breach of this Agreement does not constitute a waiver of the right to enforce its rights with respect to the same or any other breach.

18. Amendment

We may amend the terms of this Agreement by giving 30 days notice to you of such amendment.

18. Terms

The following definitions apply unless the context requires otherwise:

Agreement means the Broker Forms Licence Agreement and the Licence Agreement.

Anniversary Date means the date one year from the Commencement Date, and the same date in every subsequent year.

Claim includes actions, causes of action, potential causes of action, suits, legal proceedings, disputes, differences, Rights, duties, Obligations, liabilities,

responsibilities, accounts, interests, costs (whether or not subject to court order) and demands.

Client Information is information including personal information about Your clients (including clients of Your Registered Users) entered into the Broker Forms Software.

Commencement Date is the date calculated in accordance with clause 1.

Confidential information means:

(a) all information and know-how of, or in the possession, custody or power of that party in relation to its business, clients (including information or data concerning members of funds operated or controlled by those clients) systems and systems environments;

(b) all business information and other information identified, or treated, but the party as confidential;

(c) which has already been, or is subsequently, provided to the other party, in the course of their business, commercial or technical discussions, or in any other context, regardless of its media or form, and in the case of the Licensors the Software, source code materials and documentation and any derivation, or adaption of the Software, source code materials and documentation, but excludes information already in the public domain after the date of this Agreement, other than as a result of a breach by the other party of its confidentiality obligations, whether under this Agreement or otherwise.

Forms means the online fillable insurance underwriting Fact Find and Claim Report Forms and Client Insurance Portfolio Review Form available via the Broker Forms Software.

Initial Term begins on the Commencement Date for the period of one year.

Intellectual property rights means all intellectual property rights, including:

(a) Patents, copyright, rights in software layout and design, registered and unregistered designs, trademarks, service marks, moral rights, domain names, business names and any right to have confidential information kept confidential; and

(b) Any application or right to apply for registration of any rights referred to in paragraph (a).

Licence Agreement means the Broker Forms Licence Agreement as may be amended from time to time.

Licence Fee is the yearly fee payable by You and calculated in accordance with clause 4 and the Schedule.

Licensee means “You” and “Your” and includes your employees, contractors and permitted assigns.

Licensor means Broker Forms Pty Ltd ACN 613 281 931 of Ground Floor, 64 Hindmarsh Square, Adelaide SA 5000 as trustee of the Donnelly Family Trust, “We”, “Our” and “Us”.

Obligation means any legal, equitable, contractual, statutory or other obligation, commitment, duty, undertaking or liability.

Parties for the purposes of this contract refers to the Licensor and Licensee.

Registered Staff User Seat is a position occupied by a Registered User allowing them to use the Software in accordance with this Agreement as one of Your allocated Registered Users. A Registered Staff User Seat may be occupied by only one Registered User.

Registered Users are the employees or subcontractors of the Licensee who have been granted rights to use the Software in accordance with this Agreement by virtue of being allocated a **Registered Staff User Seat** by You. Where You as Licensee personally require access to the Software, You may also be a **Registered User** occupying a **Registered User Staff Seat**.

Software means the current and future versions of the Broker Forms Software, owned by the Licensor, and any future software packages related therein, whether they be “add-ons” or stand-alone software packages.

Subsequent Term means a term beginning on the first and subsequent Anniversary Date for a period of one year.

Website means the internet site at the domain www.brokerforms.com.au .

30 Day Free Trial means a trial period granted by Us to You in our absolute discretion enabling You to trial the Software and be bound by the terms of this Agreement including the special conditions referencing the “30 Day Free Trial”.