

Midwinter's AdviserTECH CPD - Terms and Conditions - January 2012

1 Definitions and interpretations

1.1 In this Agreement the following definitions apply:

ASIC refers to the Australian Securities & Investments Commission.

Business Day means a day on which banks are open for business in Sydney, New South Wales excluding a Saturday, Sunday or public holiday in New South Wales.

Client Driven Content is any Client Content (or user content) that has been made available to users as part of the Online Service or has been uploaded to the Online Service by the Client.

Subscription Start Date refers to the date of acceptance of this Agreement or as outlined in the application form.

Fees are denominated in Australian Dollars and are determined on calculations based on user numbers.

Registered / Nominated User is the user(s) as present on or nominated by the client on the application forms.

Subscription Terms are for a 12 month period.

Training Materials means all materials developed by Midwinter or licensed by Midwinter under this Agreement and made available to Users, as part of the Product.

Confidential Information is all Midwinter's information which should be considered as confidential. This includes information disclosed to the Client before or after the Subscription Start Date but excludes information which:

- (a) the Client can prove was in their possession prior possessed to its disclosure by Midwinter ;
- (b) becomes part of (other than through a breach of this agreement) or should be considered part of the public domain; or
- (c) Was lawfully acquired before the date of disclosure under this Agreement by the Client from a third party that is not restricted as to its use or disclosure.

Intention means training with the aim of satisfying the ongoing statutory training requirements for persons who are authorised by law to provide financial product advice.

Intellectual Property Rights means all industrial and intellectual property rights at any time protected by statute or common law, throughout the world, and includes rights in respect of copyright, patents, trademarks, designs, trade secrets, know-how, confidential information and circuit layouts, and any application or right to apply for registration of any of those rights.

Online Service means Midwinter's online CPD training and technical resource that includes financial planning resources, CPD training tools, Documentation and User Guides and reporting functionality that includes both the Updates and training reports. It includes

educational materials, and papers written by Midwinter that users may download in the course of completing CPD points or using the technical resources.

Renewal Term means a period equal to the Initial Subscription Term (being 12 months). Training Reports mean any report containing details of training undertaken by users that are generated by the Online Service.

Subscription Form means the Subscription Form which the Client is required to complete and signed to obtain access to the Online Service if the Client does not sign a written copy of this Agreement.

Documentation and User Guides means training manuals, user guides, online videos tutorials and other training material produced by Midwinter to assist and guide the user in using the Online Service.

Force majeure event is an event beyond the reasonable control of Midwinter.

Term means the Initial Term and each subsequent Renewal Term.

Updates means upgrades to the Online Service and new Documentation and User Guides which is made available by Midwinter through the Online Service.

User Information means information that users provide as part using the Online Service.

Users mean the people who have been provided access to the Online Service under this Agreement. The users are nominated in the application forms by the client (employer or applicant).

Website means www.advisertech.com.au or other such websites as determined by Midwinter from time to time.

2 Licence Terms

2.1 Grant of licence: Midwinter grants the client from the Commencement Date:

- a) a non-exclusive non transferrable licence for the Users to use the Online Service for the Term and solely for the Intention; and
- b) a perpetual non-exclusive licence to use the Training Reports for the Client's acceptable business purposes.

2.2 Passwords and User profiles

The Client Acknowledges:

- a) that Midwinter may monitor user activity when accessing the Online Services;
- b) that access to the Online Service is protected by unique passwords that are assigned to each User and must not be used by any other person (including any other User);
- c) they are obligated to provide Midwinter with the details of each User. The user details include but are not limited to the users name, contact details, email addresses and areas of advice permissions; and
- d) it must undertake that it will not disclose to any other parties their unique passwords. Further to this the client must ensure that each User does not disclose their unique password to any person other than the nominated user.

2.3 Variation in the number of Users

If the client wishes to alter the number of users Midwinter will require at least 10 working days to process alterations.

The client may

- a) Reduce the number of users or cancel access for a user by notifying Midwinter in writing. No refund will be paid on reduction of users or cancellation.
- b) Increase the number of Users specified Subscription Form by notifying Midwinter in writing. Midwinter will then charge the client accordingly for the additional user(s)

2.4 Alteration & Substitution of Users Access

From time to time the Client may notify Midwinter in writing of alterations to user details and the Substitution of users from one nominated user to another new nominated user.

2.5 Invoicing for variation in user numbers

- a) Any increase in User numbers will incur additional user fees in that month if Midwinter has not been advised of the change by the 15th day of that month.

3 Term and Renewal Terms

3.1 Term

This Agreement starts on the Subscription Start Date and continues for the Initial Term (12 months) unless terminated in accordance with this Agreement.

3.2 Renewal

- a) Midwinter may provide the Client with 30 days prior written notice that the Initial Term is due to expire. If the Client wishes to renew the Agreement for a successive Renewal Period, the Client must pay the upfront Fees for the Renewal Period to Midwinter with 14 days of the expiry of the Initial Term or this Agreement will automatically terminate.
- b) If Midwinter allows the client to pay the Fees via the monthly payment option, the client agrees that expiry of the Initial Term this Agreement will automatically renew for successive Renewal Periods unless the client provides notice that it does not wish to renew. This notice must be received 15 days prior to the expiry date.

4 Payment and Fees

4.1 Fees

The client acknowledges that:

- a) The Client must pay Midwinter the Fees on an upfront basis within 14 days of the issue of the invoice to the client,
- b) The fees are non-refundable;
- c) The Client can elect to pay via a monthly invoice if the Client has 40 or more users. The Client must pay Midwinter the Fees under this payment option within 14 days of the issue of the monthly invoice;
- d) Midwinter reserves the right to vary the Fees with 60 days of written notice. If the Client is paying on a monthly basis the variation will not come into effect until the start of the successive renewal period.
- e) Midwinter may suspend the online services if payment is not received within the specified payment terms.

4.2 Good and Services Tax

The Client acknowledges that they must pay all taxes (including GST) on the Online Services

provided. The prices on the application form are exclusive of GST taxes unless stated otherwise.

5 Confidential Information

5.1 Acknowledgment & Obligations of Confidentiality and Disclosure

- a) At all times the Client must except as may be required by law, maintain the confidentiality of the Confidential Information.
- b) The Client acknowledges that all the Confidential Information is secret and confidential to Midwinter. Any unauthorised use, reproduction or disclosure of the Confidential Information by the Client is prohibited and may result in loss or damage to Midwinter.
- c) In instances where this agreement allows disclosure of Confidential Information to a third party the Client is responsible to ensure that the third party agrees to protect the Confidential Information on the same terms that are contained in this Agreement.
- d) If the client is required by law to disclose Confidential Information the Client will ensure that it does so in a manner that minimises disclosure and Midwinter is notified in writing indicating the reason for the disclosure.
- e) The Client acknowledges that a breach of this Agreement may result in Midwinter suffering loss and damages. In some instances damages from a breach may be hard to ascertain and may not be adequate for compensate the breach. Midwinter may seek to restrain any actual or threatened breach of this Agreement by injunction or any similar remedy.

6 Online Service Content

6.1 Midwinter Undertakings

- a) Midwinter will use reasonable endeavours to ensure that the Online Services content and training material for the relevant competencies is of an acceptable standard that is consistent with that required by ASIC and industry bodies.
- b) The Client acknowledges that the Online Service (and any other goods or services provided by Midwinter under this agreement) do not constitute 'Financial Services' as defined in the Corporations Act and cannot be relied on when providing advice. The content of the Online Service should not be relied upon without confirmation from another reliable and independent source.
- c) The Client acknowledges that the Online Service has been created and is supported by Midwinter with the intention of satisfying the ongoing statutory training requirements for persons who provide financial product advice. Midwinter does not warrant that the Online Service will satisfy all the users' statutory requirements in relation to the continuing professional education.
- d) Midwinter gives no warranty as to the accuracy or completeness of contents of the Online Service. The client and users must verify the information before making decisions in reliance on the information. Midwinter will endeavour to ensure but does not warrant that the information or material provided by the Online services is correct.

7 Client Driven Content

- a) The Client may add Client Driven Content as allowed by the Online Service.

- b) The Client must ensure that it does not infringe third party intellectual property rights when adding Client Driven Content to the Online Services. The client indemnifies Midwinter from infringement of a third parties intellectual property rights. The Client indemnifies Midwinter against any claim, expense, action, loss, damage, or liability by Midwinter in connection with the Client Driven Content.
- c) Midwinter may remove Client Driven Content that if Midwinter is of the opinion that it breaches the terms of this agreement. Client Driven Content must not be illegal in nature or contain any destructive components.
- d) Midwinter will ensure that access to Client Driven Content will be restricted to the nominated users and Midwinter staff members.

8 Support and maintenance

8.1 Training and User guides

- a) Midwinter will provide adequate training to the users in order to competently use the Online Services. Electronic versions of the user guides will be provided on request and will be available through the Online Services.
- b) Midwinter will also provide reasonable telephone IT support on 1300 882 938 in relation the Online Services on Business Days between the hours of 9.00 am and 5.00 pm (ESDT).

8.2 Midwinter Undertakings

Midwinter will maintain the Online Service by:

- a) correcting material errors and defeats in the Online Services;
- b) periodically updating the Online Services as Midwinter considers necessary;
- c) Making regular back up copies of the Online Service at least fortnightly and will maintain each back up copy for at least one month.

Midwinter may alter the technical specifications of the online services at its discretion by providing no less that 3 months' notice to the Client.

9 Liabilities

9.1 Client's warranty & Exclusion of implied warranties

- a) The client warrants that it has not relied to any extent on any omission, representation, statement or undertaking, whether written or otherwise, made by or on behalf of Midwinter in entering into this agreement or in its dealing with Midwinter.

9.2 Liability & Remedies

- a) Midwinter is not liable to the Client the under or in connection with this Agreement for any indirect or consequential losses, damages, costs or expenses (including loss of profits) of any kind, loss of revenue, loss or corruption of data, interruption to business, and economic loss of any kind, whether in contract, negligence or any other tort, under any statute or otherwise.
- b) To the extent to the extent permitted by law, Midwinter's aggregate liability to the Client in connection with this Agreement in respect of all claims, whether in contract, negligence or any other tort, under any statute or otherwise, will not exceed in aggregate an amount equivalent to the Fees paid by the Licensee to Midwinter in the current or preceding calendar year.

- c) To the extent permitted by law, Midwinter's liability for any claim arising directly (or indirectly) as a result of a breach of any non-excludable term or condition implied by statute is limited to the cost of supplying the equivalent goods or service to the client.

10 Intellectual Property Rights

10.1 Ownership

- a) All ownership of existing and future Intellectual Property Rights, title and interest associated with the Online Service is, and will always remain, the sole and exclusive property of Midwinter. Midwinter retains sole ownership of all data and information generated that results from the use of the Online Services.
- b) Midwinter however does grant the Client a limited licence to use information generated through the operation of the Online Service under the conditions outlined in this agreement.
- c) Under this agreement the Client must not allow or aid persons within their control to make copies or distribute the content of the Online Services in a manner that is inconsistent with the terms of this agreement and the protection of Midwinter intellectual property rights.
- d) Midwinter agrees that it does not own the Client Driven Content. However the client agrees to grant Midwinter a non-exclusive, non-transferable licence to use the Client Driven Content for the purpose of fulfilling its obligation under this agreement.
- e) Midwinter warrants that it is not aware that, or of any claim that, the Intellectual Property Rights of any person will be or are infringed on by the Online Services.

11 Warranties

Midwinter does not warrant that:

- a) the Online Service will be defect and error free and operate in an uninterrupted manner; or
- b) the Online Services are compatible with the client's computer equipment & software.

12 Termination

12.1 Termination by Midwinter

Clauses 8 and 9 survive termination of this agreement.

Midwinter may without liability terminate this agreement at any time by written notice to the Client if:

- a) the client commits a material breach of any of its obligations under this Agreement
- b) an Insolvency Event occurs in relation to the Client
- c) the Licensee fails to pay any Fees or other amounts owing to Midwinter by their due date for payment in accordance with the provisions of this agreement or the invoicing terms.
- d) the client breaches this agreement and does not rectify this breach within 10 Business Days of receiving a written notice from Midwinter specifying the breach and requiring its rectification.

12.2 Termination or suspension of Client and User access by Midwinter

Midwinter may suspend the Client's access to the Online Service or terminate this Agreement by providing 7 days' notice to the Client if:

- a) the Client has not paid the amounts due under this Agreement or the invoicing terms.;
- b) the Client commits a breach of this Agreement in a manner that cannot be remedied;
- c) the Client suffers a change in control or ownership; or
- d) Midwinter gives the Client 90 day's written notice.

On termination of this agreement by Midwinter is on a without prejudice basis in regards to other rights to other rights in this agreement.

12.3 Client Obligations on termination

On the expiration or termination of this Agreement for any reason, the Client must promptly:

- a) pay all outstanding amounts owing under this Agreement and immediately cease accessing and using any of the Online Service and ;
- b) erase or destroy of all copies of the Online Service and Midwinter property containing the Confidential Information.

13 Disclosure and Use of Client information

13.1 The Client consents to Midwinter using personal and other contact information that has been provides to Midwinter for the below purposes:

- a) Marketing other services provided by Midwinter or a related third party;
- b) Information about upgrades, errors and updates to the online services

13.2 The Client consents to Midwinter disclosing information in regards to the Client's use of Midwinter's Online Services if required legally by ASIC or any another regulatory or government authorities.

14 General

14.1 Notices

- a) Any notice or other communication between the parties in this agreement to this agreement: must be legible, in writing and in English and sent to the address, email or fax number specified below:
- b) Address: Suite 2, Level 14, 111 Elizabeth St Sydney NSW 2000.
- c) Fax: (02) 9233 4485
- d) Email: info@midwinter.com.au

14.2 Entire Agreement

- a) This agreement constitutes the entire agreement of the parties about its subject matter at the date of this agreement and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.

14.3 Variation

- a) Midwinter at its discretion may from time to time make variations to this Agreement. Midwinter will provide the client with 90 days notice prior to any alteration. These changes will not affect the Client's rights or increase its obligations until such time the client renews its subscription to the online services.

14.4 Agreement Indemnities

- a) Each indemnity in this Agreement including this indemnity shall survive the termination of this agreement and is separate and independent form each indemnity provided by the parties.

14.5 Relationship

- a) This Agreement does not create a relationship of employment, agency or partnership between the parties. The Licensee has no right to incur, assume or create any obligation, liability or expense on behalf of Midwinter and must not represent that it is authorised to act on behalf of Midwinter.

14.6 Entire Agreement

- a) This agreement constitutes the entire agreement of the parties about its subject matter at the date of this agreement and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.

14.7 Waiver

- a) Waiver of any provision or right under this Agreement must be in writing signed by the party entitled to the benefit of that provision or right. Failure of either party at any time to require the performance of any provision of this Agreement will not affect the right of such party to require full performance at any time and the waiver by either party of any breach of any such provision will not be taken to be a waiver of any subsequent breach.

14.8 Force majeure

- a) If a Force Majeure Event affects Midwinter's ability perform or delays its obligation under this contract it will not be liable for suffering loss and damages.

14.9 Severability

- a) If any provision of this agreement is found to be invalid or unenforceable the validity or unenforceability of such provision will not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability will remain in full force and effect.

14.10 Assignment

- a) The Client may not assign its rights or obligations under this Agreement without Midwinter's prior written consent.

14.11 Applicable law

- a) This Agreement shall be governed and construed in accordance with the laws of the State of New South Wales and the parties agree to submit to the non- exclusive jurisdiction of the courts of that State.

Midwinter Advice Solutions Pty Ltd

Level 14, 111 Elizabeth St
Sydney NSW 2000

www.midwinter.com.au

info@midwinter.com.au

Toll free 1300 882 938

ACN 121 020 620



Midwinter's *Reasonable Basis* software is currently ranked #1 in financial planning software according to the *Investment Trends 2009 Planner Technology Report*. *Reasonable Basis* quickly produces compliant product replacement advice and optimises complex strategy advice while remaining simple and easy to use.



Midwinter's *Client Manager* is a completely web based CRM that provides financial services licensees and advisers with the processes and automation required to control and grow your business. *Client Manager* integrates CRM functionality with Portfolio Management, Practice Management and Dealer Management.



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To find out more about Midwinter's financial advice offering please contact us on **1300 882 938** or visit **www.midwinter.com.au**.

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