SOFTWARE LICENCE AND CUSTOMER AGREEMENT

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BETWEEN: Practical Systems Ltd ABN 40 001 656 373 of 121 Allingham Street

                ARMIDALE NSW 2350 (the "**Licensor**");

AND: The **Customer**

RECITALS:

A.   The Licensor is the owner of and has the right to license the Software and the Materials.

B.   The Customer wishes to use the Software and the Materials.

C.   The Licensor has agreed to license the Software and the Materials to the Customer and the Customer accepts the licence on the following terms and conditions.

THE PARTIES AGREE:

1.   LICENCE

1.1.   The Licensor grants an exclusive, non-transferable, non-revocable licence to the Customer to Use the Software and Materials on and from the date of this Agreement for the Permitted Purpose.

1.2.   The Customer may not assign the Licence or sublicense the Licence. The Customer is not permitted to adapt/modify the code.

1.3.   The Customer is not permitted to reverse engineer, disassemble or otherwise endeavour to obtain the source code from the object code.

1.4.   The Customer is limited to use the Software on Three (3) computer(s). If the Customer wishes to use the Software over this limit, the Customer will obtain the Licensor's permission in writing and the Licensor reserves the right to charge an additional Licence fee.

2.   TERM OF LICENCE

2.1.   The parties acknowledge that the Licence is perpetual as set out in Clause 1.1. subject to the provisions of clause 11.

3.   LICENCE FEE

3.1.   The Customer will pay the Licensor the fee as set out in Part D of Schedule One.

3.2. The Customer is not obliged to pay any fee due unless it has received a Tax Invoice from the Licensor.

4. INTELLECTUAL PROPERTY AND DATA OWNERSHIP

4.1. The Customer acknowledges and agrees that the Licensor is the owner of all Intellectual Property Rights in the Software and the Materials.

4.2. The Customer must not alter, remove or obscure any trade mark or copyright symbol or legend or other proprietary mark on the Software and the Materials.

4.3. The licensor acknowledges that the data collected by the Customer during the operation and resultant intellectual property is the property of the Customer.

4.4. The Licensor is the custodian of the Customer's data and may not distribute, transfer or use the Customer's data without the consent of the Customer

4.5. The Customer acknowledges that the licensor may aggregate , prepare derivate works provided that the derived data does not directly identify or could be reasonably be used to identify the customer

5. CONFIDENTIAL INFORMATION

5.1. The Customer acknowledges and agrees that the Software and the Materials contain Confidential Information belonging to the Licensor.

5.2. The Customer agrees to disclose the Software and Materials only to its employees and contractors who need to access such information so that the Customer can exercise its rights and obligations under this Agreement.

5.3. The Licensor agrees to treat the Customer's information in confidence.

6. LICENSOR REPRESENTATIONS & WARRANTIES

6.1. The Licensor represents and warrants that it has the right to license the Software and the Materials to the Customer.

6.2. The Customer's use of the Software and the Materials will not infringe the rights including Intellectual Property Rights of any third party.

7. CUSTOMER WARRANTIES, OBLIGATIONS & ACKNOWLEDGEMENTS

7.1. The Customer warrants that it has not relied upon any representation made by the Licensor other than as set out in this Agreement.

7.2.   The Customer is not permitted to sell, charge, mortgage or otherwise encumber the Software and/or the Materials in any way.

7.3.   The Customer acknowledges that, subject to Clause 1, it has no Intellectual Property Rights in the Software and/or the Materials.

The Customer acknowledges that the Licensor gives no guarantee as to the accuracy or completeness of the Software and the Materials nor that they are free from error.

7.4.   The Customer is solely responsible for the use, supervision, management and control of the Software and the Materials.

7.5.   The Customer will ensure that the Software and Materials are at all times protected from access, use or misuse and damage and destruction by any person not authorised by either the Licensor or the Customer and the Customer will notify the Licensor immediately if it becomes aware of any unauthorised use of the Software and/or Materials.

8.   **LIMITATION OF LIABILITY**

8.1.   To the fullest extent permitted by law, the Licensor expressly disclaims all implied warranties and conditions, including without limitation implied warranties as to merchantability, fitness for purpose of the Software and Materials.

8.2.   To the extent that any liability of the Licensor under *Competition and Consumer Act 2010* (Cth) cannot be excluded, the Licensor's liability is limited to replacing the Software and/or Materials.

8.3.   Where the Licensor has agreed to install or install and acceptance test the Software, to the fullest extent permitted by law the Licensor makes no representation or gives any warranty in respect of the provision of the services except that it will carry out the service competently, professionally and to the best of its ability having regard to the terms of this Agreement.

8.4.   To the extent that any liability of the Licensor under the *Competition and Consumer Act* 2010 (Cth) cannot be excluded, the Licensor's liability is limited to either the supply of the services by the Licensor under these terms and conditions again or the payment of the cost of having another person provide again to the Customer similar services as the services supplied by the Licensor under these terms and conditions.

8.5.   To the fullest extent permitted by law, the Licensor excludes all liability for indirect and consequential loss including without limitation the loss or corruption of the Software, loss of revenue, loss of profits, failure to realise expected profits or savings

and any other commercial or economic loss of any kind arising from this Agreement or the provision of any services by the Licensor.

9. INDEMNITY

9.1. The Customer indemnifies and holds harmless the Licensor and promises to keep the Licensor indemnified against any loss, claim, action, settlement, award, judgment, expense or damage of whatsoever kind or nature and howsoever arising that the Licensor might suffer as a result of any inaccuracy of the Software and/or the Materials including any unauthorised use of the Software and/or Materials by the Customer.

10. SOURCE CODE IN ESCROW

10.1. The parties agree that source code is not required to be placed in escrow.

11. TERMINATION

11.1. Where the Customer fails to perform any of its obligations set out in this Agreement, the Licensor reserves the right to immediately terminate the Licence with Notice to the Customer.

11.2. The Customer fails to pay the license fee.

11.3. Either party may terminate this Agreement having immediate effect by Notice to the other party if the other party:

(a) breaches any provision of this Agreement and fails to remedy the breach within 7 days of receiving Notice requiring it to do so; and/or

(b) is wound up, has an administrator appointed to it, a receiver appointed to any of its assets, enters into any arrangement, assignment or composition with any of its creditors or any of them or becomes insolvent; and/or

(c) ceases to carry on its business or where there is any effective change in the control of or ownership of that business.

11.4. Subject to Clause 12.4, on termination the parties agree that all rights granted to the Customer under this Agreement will cease immediately and the Customer will return all Software and Materials provided under this Agreement. If requested by the Licensor, the Customer will provide Notice to the Licensor stating that the Software and Materials have been returned, destroyed or otherwise dealt with as the case may be as directed by the Licensor.

11.5. Following termination, the parties agree that the provisions set out in Clauses 5 (Confidential Information), 7.1 (Licensor warranty), 8.1 (Customer warranty), and 9 (Limitation of Liability) will continue to be binding.

11.6. Following termination of this agreement the Customer acknowledges that the Licensor has no obligation to retain any of the Customer's data

12. NOTICES

12.1. Any Notice given pursuant to this Agreement must be in writing, signed by an officer of the sender, addressed to the recipient at the address, facsimile number or email address set out below or to such other address, facsimile number or email address as a party may from time to time notify in writing to the other:

13. DISPUTE RESOLUTION

13.1. In the event of a dispute arising between the parties in respect of any right or obligation under this Licence, each party covenants with the other in good faith to take all steps necessary to attempt to resolve the dispute.

13.2. In the event that the parties are unable between themselves to resolve a dispute within a reasonable period having regard to the nature of the Licence and the dispute, then either party may apply to their local State/Territory Alternative Dispute Resolution centre for resolution of the dispute under the ADRoIT Principles.

14. GENERAL PROVISIONS

14.1. **(Law and Jurisdiction)** This Agreement shall be governed by and construed in accordance with the laws of NSW and any claim made by one party against the other in any way arising out of this Agreement will be heard in NSW and the parties submit to the jurisdiction of those Courts.

14.2. **(Relationship)** Nothing in this Agreement will constitute or be deemed to constitute a partnership, joint venture or agency between the parties.

14.3. **(Entire Agreement)** The terms of this Agreement constitute the entire terms of this Agreement and all understandings, prior representations, arrangements or commitments that are not contained in this Agreement have no effect whatsoever and do not bind the parties.

14.4. **(Waiver):** No waiver of any right or remedy will be effective unless in writing and shall not operate as a waiver of that right or remedy or any other right or remedy on a future occasion.

14.5. **(Implied Terms):** Any implied term under law that can be excluded is hereby expressly excluded and no term is to be implied as being a term of this Agreement unless by law it cannot be excluded.

15. INTERPRETATION

15.1. Definitions

"**Agreement**" means this licence agreement including the Schedules and any amendments in writing.

"**Confidential Information**" means all information in whatsoever form that is:

(a)   marked or identified as "Confidential", "Secret", "Not to be Disclosed" or "Private";

(b)   is designated, described or referred to by the discloser in any document or correspondence as confidential, secret or private or not to be disclosed;

(c)   the receiving party knows or ought to know is confidential;

but does not include any information which prior to the date of this Agreement was lawfully in the public domain or which the discloser has published, circulated or announced publicly or was developed by the receiving party independently of the disclosing party.

"**Intellectual Property Rights**" means all rights in copyright, circuit layout, designs, trade marks, patents and all other rights in intellectual property as defined in Article 2 of the World Intellectual Property Organisation (WIPO) Convention whether registrable, registered, patentable or not.

"**Licence**" means the software licence granted by the Licensor to the Customer in Clause 1.

"**Materials**" means the documentation provided by the Licensor to the Customer and including the operating manuals and other material set out in Part A of Schedule One relating to the Software and includes updates to those materials.

"**Permitted Purpose**" means the purpose set out in Part B of Schedule One.

"**Software**" means the computer program/s provided by the Licensor set out in Part C of Schedule One and includes any updates provided by the Licensor during the term of this Agreement.

"**Tax Invoice**" means an invoice that is GST compliant.

"**Use**" means use/load, run, and store.

16. AGREEMENT

16.1   Installation and use of the software by the Customer signifies acceptance of these terms and conditions and no other indication of acceptance shall be required

SCHEDULE ONE

PART A – MATERIALS (Definition)

Access to the Practical Systems Knowledge Base and associated product manuals and help topics

PART B – PERMITTED PURPOSE (Definition)

The customer is free to use the software as part of their business management processes

PART C – SOFTWARE (Definition)

- **Cashbook Plus!**

- **Cashbook Platinum**

- **Stockbook**

- **Agrisphere**

- **Farmbook**

- **Farm Map**

- **Stockhand**

And any other derivative products

PART D – LICENSE FEE

The License fee is advised on the issued Tax Invoice.