AdviceOS API Licence Agreement (Version 1)

This API Licence Agreement ("**Agreement**"), deemed effective _____/_____/_____ , ("**Effective Date**")
is between **Midwinter Financial Services Pty Ltd** (ABN 22 121 020 620) ("**Midwinter**") of Level 6, 345
George St. SYDNEY NSW 2000 and **the Licensee.**

Licensee details:

1.	Dealer group name:	
2.	Company name:	
3	ABN:	
4.	Address:	
5.	Contact email:	

Recitals

A.   Midwinter is a financial advice software company that licenses AdviceOS to its customers.

B.   the Licensee is an existing customer of Midwinter and is licensed to use AdviceOS pursuant to the
     Service Terms and Conditions dated _____/_____/_____ ("**Service Terms**").

C.   The parties wish to enter into an agreement whereby the Licensee can access and use Midwinter's
     AdviceOS APIs for the purpose of integrating with the Licensee's system, software or platform, or
     a third party's system, software or platform used by the Licensee to deliver services to its
     customers.

Terms

1.   **Licence**

     In consideration of the Licensee agreeing to comply with the terms of this Agreement, Midwinter
     hereby grants to the Licensee a personal, non-transferable, non-assignable, non-exclusive,
     royalty-free licence to access and use the AdviceOS APIs only for the purpose set out in clause 0
     of this Agreement, subject to the terms and conditions of this Agreement.

2.   **Term**

     The licence for the AdviceOS APIs, and the term of this Agreement, shall be from the Effective
     Date and will continue for term of the Service Terms unless terminated earlier in accordance with
     this Agreement.

3.   **Scope of licence**

     (a)   This Agreement grants and conveys to the Licensee only a licence to use the AdviceOS APIs
           to integrate with the Licensee's system, software or platform, or a third party's system,
           software or platform licensed to the Licensee for the Term, and does not grant, convey, sell

or assign to the Licensee any legal or equitable title or other right in the AdviceOS APIs whatsoever.

(b)   All right, title and interest to the AdviceOS APIs shall at all times be owned by or be the property of the Midwinter. The Licensee may not sub-license, sell, lend, rent, lease, gift, transfer, assign, charge or otherwise dispose of all or any part of the AdviceOS APIs.

(c)   The Licensee must not:

    (i)   interfere with the operation of the AdviceOS in respect of its use of the AdviceOS APIs; or

    (ii)   do anything that may affect the integrity of the AdviceOS APIs and/or AdviceOS.

4.   **Variations to AdviceOS API**

Midwinter may vary, add to or otherwise modify the AdviceOS API's from time to time during the Term, including to respond to applicable legislative changes.

5.   **API Support**

Midwinter has no obligation to:

(a)   provide support services in respect of the AdviceOS APIs; or

(b)   maintain the AdviceOS APIs; or

(c)   correct any errors or deficiencies in the Midwinter APIs; or

(d)   provide enhancements for the Midwinter APIs.

The Licensee shall have no obligation to purchase any such maintenance or enhancements.

If the Licensee wishes the Midwinter to provide such services, they may be performed pursuant to a separate services agreement with separate charges. The Licensee must ensure that any AdviceOS APIs issues or bugs identified by the Licensee are logged with Midwinter by sending an email to Midwinter's helpdesk (helpdesk@midwinter.com.au).

6.   **Warranties, representations and liability**

The Licensee acknowledges and agrees that:

(a)   The AdviceOS APIs are provided in "as is" basis. Midwinter represents and warrants that it has the right to grant this licence, but to the extent permitted by law, makes no other warranties, express or implied, including, but not limited to, performance or functionality of the AdviceOS APIs, or any implied warranties of merchantability or fitness for a particular purpose, or the access to the AdviceOS APIs, nor does it guarantee that the AdviceOS APIs will operate continuously or at all, or be fault-free;

(b)   notwithstanding any other clause in this Agreement, the Licensee fully indemnifies Midwinter and its Affiliates against any loss, costs, expenses or liability, whether arising in contract, tort, equity or otherwise, in relation to or arising from use of or access to the AdviceOS APIs, including, without limitation, any impact that such use or such access may have on Midwinter's data (including Client Data) and Midwinter's hardware and software applications;

(c)   subject to and without limiting clause 0(b), the Licensee's sole remedy and the sole liability under this Agreement is limited to termination of this Agreement;

(d)   Licensee warrants it has information security controls and measures implemented and maintained that are consistent with Good Industry Practice;

(e)   it will comply with all relevant laws in relation to its business and in performing its obligations in this Agreement; and subject to and without limiting clause 0(b), under no circumstances shall Midwinter be liable to the Licensee or others for any direct, indirect, special, incidental, consequential or other loss or damages arising out of or in connection with this Agreement regardless of the form of the action, whether in contract or tort (including negligence), statute, law or equity.

7. **Intellectual Property Rights**

The parties agree that:

(a)   all rights (including Intellectual Property Rights), title and interest in and to the AdviceOS APIs, including all updates and modifications, belong to the Midwinter; and

(b)   nothing in this Agreement transfers ownership in, or otherwise grants any rights in or to, either party's Intellectual Property Rights.

8. **Data security**

Without limiting any other clause in the Service Terms or this Agreement, including clause 0, the Licensee will ensure that Personal Information and Client Data made available through the AdviceOS APIs and accessed and used by the Licensee under this Agreement is protected from misuse and loss and from unauthorised access, unauthorised modification or unauthorised disclosure. In the event of any actual or reasonably suspected unauthorised access to, use or disclosure of Personal Information and/or Client Data, including, but not limited to, in relation to synchronisation errors with respect to Personal Information and/or Client Data (**Security Breach**), the Licensee will:

(a)   promptly take all reasonable steps to remedy the Security Breach at its expense;

(b)   promptly notify Midwinter of the Security Breach within 24 hours of the Licensee becoming aware of the Security Breach;

(c)   promptly provide all reasonable assistance to Midwinter to identify the Personal Information and/or Client Data impacted by the Security Breach and any information reasonably requested by Midwinter for the purposes of investigating and responding to the Security Breach; and

(d)   within 5 Business Days or other period agreed by the parties in writing, provide Midwinter with an incident report of the Security Breach and its impact on the relevant Personal Information and/or Client Data.

9. **Other obligations**

The parties agree that each party will use reasonable endeavours to provide integration support by way of standard phone support to the Licensee, as required in the circumstances.

10. **Confidentiality**

(a) The Licensee acknowledges that the AdviceOS APIs contain unique and secret technological information and are trade secret and proprietary products of Midwinter.

(b) The Licensee promises and agrees not to disclose the AdviceOS APIs to any person (including, but not limited to any contractor, consultant, agent or third party) without Midwinter's prior written consent (which may be given, either wholly or conditionally, or withheld at Midwinter's sole discretion).

(c) The Licensee shall take all steps necessary to ensure that the provisions of this Agreement are not breached by any person under its control or in its service and shall immediately notify Midwinter should it become aware of non-compliance with this clause 10

(d) The Licensee's obligations in this clause 10 shall continue after this Agreement is terminated. The Licensee indemnifies and agrees to keep indemnified Midwinter and its related bodies corporate (as that term is used in the Corporations Act) from and against all losses, damages, liability, costs and expenses (including legal expenses on a full indemnity basis) sustained or incurred by those indemnified, arising out of or in connection with any breach by the Licensee of the terms of this Agreement or otherwise infringements of the Midwinter's Intellectual Property Rights in the AdviceOS APIs.

(e) To the extent that the parties have previously entered confidentiality arrangements as between themselves (such as the Service Terms) in relation to the subject matter of this Agreement, no provision in this Agreement limits the obligations on either party under such an arrangement, and to the extent there are any inconsistencies as between such an arrangement and this Agreement, the former will prevail.

11. **Termination**

(a) Without limiting clause 2, either party may terminate this Agreement upon a material breach of any one or more of its terms and conditions by the other party. The party in breach shall be notified in writing by the other party of the breach and, unless a satisfactory resolution has been agreed upon in writing within 10 days of that notification, the other party may terminate this Agreement provided, however, if the breach is the Licensee's failure to comply with clause 0 or clause 10, Midwinter may terminate this Agreement immediately.

(b) Midwinter may terminate this Agreement for convenience at any time by giving the Licensee with 90 days' prior written notice of the termination date.

(c) Upon expiry or termination of this Agreement, the Licensee shall cease to use the AdviceOS API. Midwinter shall be entitled to obtain injunctive relief to require such cessation, as well as reasonable legal fees and costs incurred in obtaining such injunctive relief.

12. **Entire agreement**

This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

13. **Survival**

The expiry or termination of this Agreement for any reason does not extinguish or otherwise affect any rights or remedies of either party which accrued before termination, or the provisions

of this Agreement which by their nature survive termination, including clauses 0, 7, **Error! Reference source not found.** and 10.

14. **Variation and waiver**

A provision of this Agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

15. **Assignment**

Midwinter may assign or novate this agreement to an Affiliate on notice to the Customer. Other than as set out in the foregoing, neither party may assign nor novate this Agreement without the other party's prior written consent (such consent not to be unreasonably withheld or delayed).

16. **Notices**

All notices and forms of communication in connection with this Agreement must be in writing and delivered by hand or sent by post to the address set out in his Agreement or as otherwise agreed.

17. **Costs**

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this Agreement and other related documentation except for stamp duty.

18. **No agency relationship**

Nothing in this Agreement will be taken to constitute either party as an employee, agent, partner or joint venturer of the other party nor is either party authorised to represent itself as acting, or to incur any obligation, on behalf of the other party.

19. **Negotiated terms**

The provisions of this Agreement are the result of negotiations between the parties. Accordingly, this Agreement shall not be construed in favour of or against either party by reason of the extent to which the party or any of its professional advisors participated in its preparation.

20. **Announcements**

(a)   The parties may make any public announcement or press release about the entering into of this Agreement or the provision of services under this Agreement, provided that such public announcements or press releases accurately reflect what the parties have agreed under this Agreement.

(b)   Each party (**IP Holder**) grants the other party the right to use the IP Holder's name, logos and trademarks in relation to announcements made under clause 20(a) as well as any other materials related to the IP Holder's performance of its obligations under this Agreement.

21. **Waiver**

No right under this Agreement shall be deemed to be waived except by notice in writing signed by each party. This clause may only be waived in writing. A waiver by a party pursuant to this clause shall not prejudice its rights in respect of any subsequent breach of this Agreement by the other party.

22. Variation

The provisions of this Agreement may not be varied except by agreement in writing signed by the parties.

23. Further assurances

Each party must do all things and execute all further documents as reasonably required of it by notice from another party to give full effect to this Agreement.

24. Governing law

This Agreement shall be deemed to have been entered into and executed in the State of New South Wales and shall be construed, performed and enforced in all respects in accordance with the laws of that State, and the parties submit to the exclusive jurisdiction of the Courts of that State.

25. Definitions

In this Agreement:

(a) **AdviceOS** means Midwinter's financial planning product that is licensed to the Licensee;

(b) **AdviceOS APIs** means the connection protocols that Licensee will use to access, and transfer data to and from, AdviceOS database and as outlined in the AdviceOS API Documentation.

(c) **AdviceOS API Documentation** as described at https://www.midwinter.com.au/access-support/api-reference/.

(d) **Affiliate** means a related body corporate, as defined in the Corporations Act;

(e) **Business Day** means any day that is not a Saturday, Sunday or public holiday in New South Wales;

(f) **Corporations Act** means the *Corporations Act 2001* (Cth);

(g) **Client Data** has the meaning given to it in the Service Terms;

(h) **Effective Date** has the meaning given to it at the top of this Agreement;

(i) **Good Industry Practice** means the use of standards, practices, methods and procedures conforming to the law and the exercise of that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the provision of similar services to an entity of a similar size and nature as the Licensee under the same or similar circumstances.

(j) **Intellectual Property Rights** means any and all:

(i) current and future registered and unregistered rights in respect of copyright, designs, semiconductor or circuit layouts, trademarks, trade names, business names, trade secrets, know-how, confidential information, patents, inventions and discoveries;

(ii) applications for grant of any of the above;

(iii) other rights of a similar nature arising (or capable of arising) under statute or at common law in the Commonwealth of Australia or anywhere else in the world; and

(iv) other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation 1967;

(k) **Personal Information** has the meaning given to it in the *Privacy Act 1988* (Cth);

(l) **Security Breach** has the meaning given to it in clause 8;

(m) **Term** has the meaning given to it in clause 2;

The Licensee and Midwinter certify by their undersigned authorised representatives that they have read this Agreement and agree to be bound by its terms and conditions.

Midwinter Financial Services Pty Ltd   **The Licensee**

_____   _____
(Authorised Signature)   (Authorised Signature)

_____   _____
(Name)   (Name)

_____   _____
(Title)   (Title)

_____   _____
(Execution Date)   (Execution Date)

END