



TRUEXPRO USER AGREEMENT

TERMS AND CONDITIONS

1. INTRODUCTION

- 1.1 By accessing the TrueXpro application ("TXP" and "Software"), the Client agrees to be bound by these Terms and Conditions.
- 1.2 These Terms and Conditions are the Terms and Conditions that apply for the use by the Client of the TrueXpro application.

2. CLIENT USER LICENCE

- 2.1 Upon receipt of payments due under the User Agreement, a TXP User Licence ("Licence") will be granted by the Licensor. This entitles the Client to access the Licensor's hosted TXP data server via a web browser. Any number of simultaneous connections are allowed.
- 2.2 A Client, using the Jump Desktop application software, may remotely connect to the Licensor's network and access a single-user version of TXP Desktop.
- 2.3 Where it is necessary for the purposes of the Client's business, the Client may wish to give access to the software or client data to an affiliate or other third party. Where this is required, the Client shall have the right to authorise affiliates or one or more third parties to exercise any or all of the licence rights granted to the Client hereunder.

3. RESTRICTIONS ON USE

- 3.1 The Client shall not remove or obscure any copyright and trademark notices or other proprietary notices relating to TXP. All notices must be duplicated as it appears on TXP on all authorized copies.
- 3.2 The Client shall not reverse engineer, de-compile, disassemble or otherwise endeavour to obtain the source code from the object code of TXP except to the extent expressly permitted by law.
- 3.3 The Client shall not permit or knowingly allow and must make all reasonable efforts to prevent any third party from or attempt to reverse engineer, de-compile or disassemble TXP or any of its functionality.
- 3.4 The Client may not distribute, rent or lease any portions of TXP to any third party.
- 3.5 The Client may not transfer TXP and accompanying software documentation on a permanent basis to another Recipient.
- 3.6 The Client shall not use TXP in any way, other than in a manner specifically licensed.

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4. UPDATE POLICY

4.1 The Licensor may from time to time create updated versions of TXP. The Licensor will make any such updated versions available to the Client at no additional cost and will provide the details of relevant changes that have been made.

5. SET UP AND INITIAL TRAINING

5.1 The Licensor will support the Client to enable its use of the Software.

5.2 Set Up assistance will be way of phone or email, unless it agreed that a site visit is required and is available from 10am to 4 pm WST, unless otherwise arranged.

5.3 Set Up services will include the following:

5.3.1 Configure the Server so as to enable the Client to access the system

5.3.2 Provide the nominated contact person or data-base administrator with up to 10 hours of training and assistance with the set up, configuration and the initiation of use of the software.

5.3.3 Provide a User Manual, Start Guide and any other relevant materials.

5.3.4 The Start Date is set out in the User Agreement, and is the date upon which Set Up services are nominated to commence.

6. MONTHLY MAINTENANCE AND SOFTWARE SUPPORT & TRAINING SERVICES

6.1 The monthly TrueXpro Software Maintenance fee entitles the Client to a User Licence for on-going access to TXP's "Web Version" and "Desktop Version".

6.2 The monthly Maintenance Fee is the Fee referred to in the User Agreement.

6.3 In addition to ongoing access to the User Licence, the following list of Software Support Services are provided on a Fee for Service basis:

- Inquiry resolutions regarding configuration, performance, and run-time problems, such as error messages, crashes, or program stability.
- Procedural inquiries regarding how to perform tasks in TXP.
- Client requested TXP software enhancements.
- Training users in relation to the operation of the software following initial Set Up and training.

6.4 In order to initiate Software Support or Training Services the Client will make an application for Services by sending a "Request and Report Form" to the Licensor.

6.5 Support Services may include:

6.5.1 A request for assistance with a specific problem or error message,

6.5.2 A request for instructions to carry out a procedure,

6.5.2 A request for Training or other User Support

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6.6 To initiate Support Services, unless otherwise agreed the Designated contact person must submit Support Requests to the Licensor using TXP's **"Request and Report Form"** by email to support@cavendi.com.au.

6.7 A separate Form should be submitted for each specific request.

6.8 Software Support -Levels of Service for system maintenance:

TXP Task Request Priority	Level of Severity	Initial Response Time*
Highest	TXP application failure resulting in total disruption of work or other critical business impact; no workaround is available	Same Day
High	Serious feature or function failure. Operations are severely restricted; a workaround is available	1 business day
Normal	Minor feature or function failure. TXP doesn't operate as designed, minor usage impact; a workaround available	2 business days
Low / Lowest	Procedural inquiry resolution, software enhancements, general information inquiry	4 business days

(*) Initial response time is business hours 10am to 4 pm WST and does not include Public holidays in the service response times.

6.9 Software Services are charged at the hourly rate set out in the User Agreement and will be charged in at least two (2) hourly blocks.

6.10 For Software Services that are expected to require more than two hours, the Licensor will endeavour to provide an estimate of the number of hours required to undertake the work and will inform the client of variations to estimates as they come to the attention of the Licensor.

6.11 Where a visit to the Client's premises, or any other travel is required, the direct costs of travel will be reimbursed to the Licensor and travel time may also be charged by the Licensor to cover the time required to travel to the relevant location.

7. ASSESSMENT OF SUPPORT REQUESTS

7.1 The Licensor may decline any requests for Software changes that would in its sole opinion infringe the intellectual property value of TXP or its copyright of TXP. The Licensor may decline any requests that could reasonably be believed would infringe the copyright of other products.

7.2 The Client's Designated Contact Person may determine and direct the Licensor as to the priority and order of resolution of service requests.

7.3 The Client agrees that the acceptance of a Request and Report Form is at the discretion of the Licensor.

7.4 The Client agrees that the acceptance and implementation of Software Enhancements is solely at the discretion of the Licensor.

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8. ADDITIONAL SOFTWARE SUPPORT SERVICES

8.1 The Client may request Additional Software Support Services provided by the Licensor with respect to TXP, covering the following:

- 8.1.2 Project Management of TXP system change implementations
- 8.1.4 Customized Form Design
- 8.1.5 Customized Report Design
- 8.1.6 Data Transfers

8.2 Charges for Additional Services will be in accordance with Clause 6.

9. MONTHLY MAINTENANCE FEE EXCLUSIONS

9.1 The Monthly Maintenance Fees exclude any work associated with the consequences of the following:

- 9.1.1 The Client's use of TXP in a manner for which it was not designed,
- 9.1.2 Operation of TXP in a software environment not recommended by the Licensor,
- 9.1.3 The Client's negligence, misuse or modification of TXP,
- 9.1.4 Disruptions caused in whole or in part, by third-party hardware or software, or
- 9.1.5 Failure by the Client to install the version of the operating system software or any third party software specified by the Licensor as listed in Schedule (item 8) for use with the release version for which Services are requested.

9.2 Assistance with any problems arising from the above may be provided as a Software Support Service, payable at the hourly rates.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Licensor to the Client, or from the Client to the Licensor.

10.2 The TXP Software is licenced not sold. The copyright, patents, trademarks and all other intellectual property rights in TXP and related documentation are owned by and remain the property of the Licensor, and are protected by national laws and international treaty provisions. The Client does not obtain any rights in TXP other than those expressly granted in this Agreement.

10.3 The Licensor retains the rights to enhancements of TXP. Any code changes, upgrades and system improvements arising from requests by The Client shall remain the property the Licensor.

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11. CLIENT DATA

- 11.1 The Client shall own all right, title and interest in and to the Client Data.
- 11.2 Following expiration or termination of this Agreement for any reason, the Licensor will, at the Client's expense and request, provide to Client a copy of all Client Data in a ".txt" tab delimited format.
- 11.3 The Licensor acknowledges that the Client Data constitutes Confidential Information.
- 11.4 The Client affirms that the data and information collected or received by them in connection with providing services to its clients is collected and acquired in accordance with all applicable laws or agreements, and when used does not does not violate the privacy rights of any person, and does not violate any applicable law or agreement.
- 11.5 The Client shall be solely responsible and the Licensor shall not be responsible for the content, accuracy, truthfulness, completeness and quality of all information and any other data, including without limitation data concerning Client's clients, services provided, and/or business operations, entered into TXP.
- 11.6 The Licensor, upon prior written notice to Client, may retain a copy of the Client Data if required to satisfy the Governmental Requirements.
- 11.7 The Licensor affirms that it takes or will take all commercially reasonable steps, including implementing and observing appropriate technical and operational data security processes and policies, to maintain the confidentiality and proprietary nature of the Client Data.
- 11.8 The Licensor will maintain safeguards against the destruction, loss or alteration of the Client Data in the possession of Licensor.

12. THE TERM OF THIS AGREEMENT

- 12.1 The term of this Agreement (the "Term") shall commence upon the Start Date listed in the Agreement and shall remain in force as long as the Licensor and the Client are not in breach of their respective obligations and the Agreement has not been terminated in accordance with Clause 13

13. TERMINATION

- 13.1 If either party materially defaults in the performance of any of its duties or obligations under this Agreement (including for non payment of amounts due) and the default has not been substantially cured within thirty (30) days after notice of such default is given to the defaulting party, then the party not in default may, by giving notice to the defaulting party, terminate this Agreement as of the date specified in such Notice of Termination.
- 13.2 Subject to Clause 13.3, on termination the parties agree that all rights granted to the Client under this Agreement will cease immediately and the Client will return all Materials provided under this Agreement. If requested by the Licensor, the Client will provide Notice to the Licensor stating that Materials have been returned, destroyed

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or otherwise dealt with as the case may be, as directed within this Agreement or by the Licensor.

13.3 Following termination, the parties agree that the provisions set out in Clauses 17, 18 and 19 will continue to be binding.

14. AGREEMENT PERIOD, USER LICENCE and SOFTWARE SUPPORT FEE, RENEWAL and REFUNDS

14.1 The Licensor shall provide a monthly Tax Invoice to the Client for Maintenance fees due.

14.2 Any fees payable in relation to Software Services will be included in the monthly Tax Invoice.

14.6 Payments by the Client are due within one week of receipt of invoices unless otherwise agreed to in writing by the Licensor.

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15. GOODS AND SERVICES TAX

- 15.1 Words or expressions used in this clause 14 which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or, if not so defined, then which are defined in the Trade Practices Act 1974 (Cth), have the same meaning in this clause.
- 15.2 Any consideration to be paid or provided to the Licensor for a supply made by the Licensor under or in connection with this Agreement unless specifically described in the Schedule as 'GST inclusive', does not include an amount on account of GST.
- 15.3 For the purposes of this Agreement the expression 'GST inclusive' is used in relation to an amount payable or other consideration to be provided for a supply under this Agreement, the amount or consideration will not be increased on account of any GST payable on that supply.
- 15.4 Despite any other provision in this Agreement, if the Licensor makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as 'GST inclusive'):
- 15.4.1 The consideration payable or to be provided for that supply under this Agreement but for the application of this clause ('GST exclusive consideration') is increased by, and the Client must also pay to Licensor an amount equal to the GST payable by Licensor on that supply; and
- 15.4.2 The amount by which the GST exclusive consideration is increased must be paid to Licensor by the Client without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- 15.5 If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.
- 15.6 The Client warrants that where GST is imposed on a supply made by Licensor under or in connection with this Agreement and the consideration for that supply was not increased as the parties mistakenly regarded the supply as GST-free, the Client will indemnify Licensor for and in respect of the GST (including any interest or penalty) imposed on that supply.

16. CHANGE CONTROL

- 16.1 The parties agree that changes to the User Agreement, such as to the name of the Designated Contact Person, will be managed through the use of a Change Notice.
- 16.2 Where a Change Notice is agreed, the parties agree that the User Agreement will deemed to have been amended in a manner consistent with the applicable Change Notice.

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17. LICENSOR REPRESENTATIONS & WARRANTY

- 17.1 The Licensor represents and warrants that it has the right to licence the Software and Materials to the Client.
- 17.2 The Client's Use of the Software and Materials will not infringe the rights including Intellectual Property Rights of any third party.
- 17.3 The Licensor will use reasonable commercial efforts to provide the Services under this Agreement in a professional manner, but does not warrant that it will be able to answer all of the Client's questions about TXP as used by the Client for its business or personal purposes, or that the Licensor will be able to suggest solutions or workarounds for all difficulties or errors encountered by the Client. Nothing in this Agreement shall be construed as expanding or adding to the warranty for TXP in this Agreement. The express warranty in this paragraph is the only warranty given by the Lessor with respect to the Services furnished hereunder.
- 17.4 Save as stated herein, the Licensor expressly disclaims all other conditions, warranties, terms and undertakings, expressed or implied, statutory or otherwise, relating to TXP and related documentation or technical support including but not limited to warranties of quality, performance, satisfactory quality or fitness for a particular purpose.

18. CLIENT WARRANTIES, OBLIGATIONS & ACKNOWLEDGEMENTS

- 18.1 The Client warrants that it has not relied upon any representation made by the Licensor other than is set out in this Agreement.
- 18.2 The Client is not permitted to sell, charge, mortgage or otherwise encumber the Software and/or the Materials in any way.
- 18.3 The Client acknowledges that, subject to Clause 10, it has no Intellectual Property Rights in the Software and/or the Materials.
- 18.4 The Client 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.
- 18.5 The Client is solely responsible for the use, supervision, management and control of the Software and the Materials.
- 18.6 The Client 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 Client, and the Client will notify the Licensor immediately if it becomes aware of any unauthorised use of the Software and/or Materials.

19. LIMITATION OF LIABILITY

- 19.1 To the fullest extent permitted by law, the Licensor expressly disclaims all other conditions, warranties, terms and undertakings, expressed or implied, including without limitation implied warranties as to the merchantability, fitness for purpose of the Software and Materials.

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19.2 Nothing in this Agreement shall limit the Licensor liability for:

19.2.1 Fraud or other criminal act;

19.2.2 Personal injury or death caused by Licensor negligence;

19.2.3 Any other liability that cannot be excluded by law.

19.3 Subject to clause 19.2, the Licensor accepts no liability for any indirect or consequential loss or damage, including without limitation, the loss or corruption of data, 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.

19.4 Except as provided in clause 17.3, the Licensor's maximum liability to the Client for any cause whatsoever will be limited to the amount of Fees paid for TXP.

20. SEVERABILITY

20.1 If a Court or other recognised authority decides that any provision of this Agreement is void or otherwise ineffective in whole or in part, then any other part and the other terms and conditions of this Agreement shall continue in full force and effect.

20.2 In the event that any of the provisions of this Agreement shall be declared or held by a court of competent jurisdiction invalid, illegal or unenforceable, the unaffected portions of this Agreement shall be unimpaired and remain in full force and effect. The parties shall negotiate in good faith a mutually acceptable substitute provision for such invalid, illegal or unenforceable provisions consistent with the original intent of the parties, which is not so affected.

21. THIRD PARTY RIGHTS

21.1 The parties do not intend that any term of this Agreement shall be enforceable by any person who is not a party to this Agreement.

22. ENTIRE AGREEMENT

22.1 This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all previous agreements, arrangements or undertakings between the parties relating to the subject matter of this Agreement and any representations or warranties previously given or made to it.

23. ASSIGNMENT

23.1 The Client may not assign this Agreement or any of its rights or obligations hereunder nor sub-Licence the use (in whole or in part) of TXP without the prior written consent of the Licensor. Such consent cannot be unreasonably withheld.

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24. NOTICES

24.1 All notices shall be given:

24.1.1 - to the Licensor via e-mail or postal address listed in the User Agreement (item 1)

24.1.2 - to the Client at either the e-mail or postal address listed in the User Agreement (item 1).

24.2 Notice will be deemed received when an e-mail is received in full (or else on the next business day if it is received on a weekend or a public holiday in the place of receipt) or 3 days after the date of posting.

25. DISPUTE RESOLUTION

25.1 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.

25.2 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.

26. FORCE MAJEURE

26.1 Except for failure to make payments, neither party will be liable for any loss, damage or penalty resulting from delays or failures in performance resulting from causes beyond the non-performing party's reasonable control and not caused by negligence, provided that the non performing party promptly notifies the other party of the delay and the cause thereof and promptly resumes performance as soon as it is possible to do so. A Force Majeure shall not be cause for default.

27. GOVERNING LAW

27.1 This Agreement is governed by and interpreted in accordance with the laws of Western Australia. Any disputes or claims relating to this Agreement shall be subject to the exclusive jurisdiction of the Western Australian Courts.