

- (b) use the Product in an unlawful manner or to create, reproduce, distribute or publish any material which is defamatory, obscene or otherwise unlawful;
- (c) use the Product in relation to outsourcing or business services or third party data;
- (d) misuse, damage or destroy the Product;
- (e) copy, lend or in any way share the Product in whole or in part with any person;
- (f) alter, modify or reproduce any part of the Product without Kaplan's written consent; or
- (g) use any or all of the Product's content for developing or producing an equivalent, comparable or alternative product to the Product in any form.

3 Term and renewal

3.1 Term

This Agreement begins on the Commencement Date and continues for the Initial Term specified in the Details or the relevant Subscription Form unless otherwise terminated in accordance with this Agreement.

3.2 Renewal

- (a) If the Client pays the Fees upfront, Kaplan will provide the Client with 60 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 Kaplan before the expiry of the Initial Term, otherwise the Agreement will automatically terminate.
- (b) If the Client pays the Fees by monthly invoice, on expiry of the Initial Term this Agreement will automatically renew for successive Renewal Periods unless and until one party gives to the other at least 60 days written notice prior to the commencement of a Renewal Period that it does not wish the Agreement to extend for a Renewal Period. When this Agreement renews for a Renewal Period the Agreement will renew in accordance with Kaplan then current Fees.

4 Delivering the Product

4.1 When the Product must be delivered

Kaplan will make all reasonable efforts to deliver the Product once a month from February to November inclusive in any calendar year.

4.2 Designated Delivery Sites

Kaplan must deliver the Product by post or courier to the Designated Delivery Sites. The Client must allow a reasonable time for the Product's delivery when arranging training activities using the Product.

4.3 Copyright notice

The Client must ensure that all audio-visual content of the Product which it reproduces contains a prominent notice in a form approved by Kaplan of Kaplan's ownership of copyright in the audio-visual content as the case may be and that use and copying are subject to restrictions contained in this Agreement. The Client must also ensure that Kaplan logos and copyright notices are not altered or removed without Kaplan's prior written consent.

4.4 Security

The Client must, and must procure that Users, store the Product in a secure manner to prevent access to it by unauthorised parties and on a medium which, to the maximum extent practicable, is not connected to a computer network. The Client is solely responsible for supervising, controlling and managing the Product's use.

4.5 Passwords and profiles

The Client:

- (a) acknowledges that the Product and/or access to the Website is password protected and that each User's password is unique to that person and the Client must not, and the Client must ensure that each User does not, disclose passwords or other security arrangements to any person;
- (b) must give Kaplan details of each User as Kaplan reasonably requests (including name, date of birth, password, telephone number, email address, and INT number (if the User is an existing subscriber of Kaplan));
- (c) must inform Kaplan if a User ceases to be the Client's employee and ensure that the User ceases accessing or using the Product; and
- (d) acknowledges that Kaplan may monitor activity on the server and will maintain access logs in respect of Users.

4.6 Risk

The risk of loss or damage to the Product passes to the Client on delivery.

5 Kaplan's obligations

5.1 Damage to the Product

- (a) Kaplan will replace any parts of the Product which:
 - (i) arrive damaged at a Designated Delivery Site; or
 - (ii) will not run for any reason on a properly functioning DVD player or personal computer, as applicable.
- (b) Kaplan need only liaise with one person nominated by the Client for the purposes of satisfying its obligations under paragraph (a).

5.2 Continuing professional development

Kaplan must:

- (a) supply Users with a participant's program notes, which will consist of technical resource notes, case studies and assessment questions;
- (b) mark all assessments submitted by the Client and return assessment feedback to the Client within 2 months of receiving it;
- (c) give the Client a monthly summary spreadsheet outlining the names of all Users and their progressive marks, by month, for all assessments undertaken and submitted by them;
- (d) supply Users with a customer number to enable them to access monthly assessment feedback and marks for all assessments undertaken on the Internet at www.kaplan.edu.au or such other address as notified in writing to the Client by Kaplan. This feedback will

be available within 2 months of receipt of the relevant assessments by Kaplan; and

- (e) within 2 months of the end of each calendar year of the Term, provide Users with the details of any entitlements they have for continuing professional development credits as a result of using the Product.

5.3 User support

Kaplan will give the Client an operating procedures manual or written instructions for the Product's use. The Client must, and must ensure that its Users, only use the Product in accordance with the normal operating procedures contained in the manual or instructions.

5.4 Editorial Committee

Kaplan must establish an Editorial Committee to meet regularly to discuss the requirements of Key Clients in relation to improvements to or modifications of the Product. Each Key Client may nominate one representative to join the Editorial Committee which will meet in Sydney, on dates and at times and locations decided by Kaplan.

6 Product's operating specifications

6.1 Client acknowledgment

The Client acknowledges that it has tested the Product before the Commencement Date and that the Product's specifications as set out in Part 3 of the Annexure meet the Client's requirements.

6.2 Modifying the Product

Kaplan may alter, substitute or modify the Product at any time as long as the Product continues to meet the definition of same in this Agreement.

7 Payments and taxes

7.1 Fees

The Client must pay Kaplan the Fees, which are non-refundable either:

- (a) Upfront on the Commencement Date;
- (b) By monthly invoice if the Client has 30 or more users, subject to an application for credit having been processed and approved prior to goods being dispatched; or
- (c) By other payment options as offered by Kaplan from time to time;

as specified in the Details or the Subscription Form.

7.2 Variation of Fees

Kaplan reserves the right to vary the Fees with 60 days written notice. If the Client:

- (a) accepts the variation the variation will take effect on expiry of the notice period; or
- (b) does not accept the variation, the Client may by written notice terminate this Agreement with effect from the expiry of the Initial Term. The Client must continue to pay the balance of the Fees as specified in the Subscription Form or Details until the expiry of the Initial Term.

7.3 Late payment

Without prejudice to Kaplan's other rights, if the Client fails to pay any amount by the due date Kaplan may charge, and the Client must pay, daily interest on the amount outstanding:

- (a) calculated from the due date of payment to the date of actual payment; and
- (b) at an interest rate 3% above the rate quoted on the due date of payment (and if no rate was quoted on that day, the day on which it is next quoted) for business overdrafts over \$100,000 by Kaplan principal Australian bank.

7.4 Payment Refusals

Kaplan will charge an administration fee in accordance with Part 1 of the Annexure, in addition to the Fees payable, if the Client makes a payment by cheque or credit card which is dishonoured or refused.

7.5 Taxes

The Client must pay all taxes (including GST) in respect of this Agreement. Amounts payable by the Client under this Agreement are exclusive of any applicable taxes unless stated otherwise.

8 Additional Users

8.1 No additional Users

Subject to clause 8.2, the Client must not allow access to the Product by a greater number of Users than the number specified in the Annexure or the Subscription Form or by persons who are not nominated Users.

8.2 Variation in the number of Users

- (a) If the client wishes to reduce the number of Users then it must notify Kaplan in writing in accordance with clause 8.3. If the number of Users is reduced below the number of Users as specified in the Annexure or Subscription Form Kaplan will charge the Fee for the number of Users as specified in the Annexure or Subscription Form.
- (b) If the Client wishes to increase the number of Users specified in the Annexure or the Subscription Form, the Client must notify Kaplan in writing in accordance with clause 8.3, and Kaplan will charge the Client for the additional User Fees payable for the additional Users in accordance with the payment method as agreed in clause 7.1.

8.3 Notice period for variations in the number of Users

Kaplan requires at least 5 Business Days to reduce or increase the number of Users.

- (a) If the Client pays the Fees upfront:
- (1). For a reduction in User numbers to have effect in a given month, Kaplan must be advised of the change by the 23rd of the preceding month. Requests to reduce User numbers received after the 23rd of the given month will not take effect until the subsequent month; or
- (2). For an increase in User numbers to have effect in a given month, Kaplan must be advised of the change by the 23rd of the preceding month. Requests to increase User numbers received after the 23rd of the given month will not take effect until the subsequent month.

- (b) If the Client pays the Fees by monthly invoice:
- (1). For a reduction in User numbers to have effect in a given month, Kaplan must be advised of the change by the 23rd of the preceding month. Requests to reduce User numbers received after the 23rd of the given month will not take effect until the subsequent month; or
 - (2). For an increase in User numbers to have effect in a given month, Kaplan must be advised of the change by the 17th of the given month. Requests to increase User numbers received after the 17th of the given month will not take effect until the subsequent month.

8.4 Substitution of Users

The Client may substitute a User for another nominated User by notifying Kaplan in writing.

9 Confidential Information

9.1 Acknowledgment of confidentiality

The Client acknowledges that:

- (a) all the Confidential Information is secret and confidential to Kaplan; and
- (b) any unauthorised use, reproduction or disclosure of the Confidential Information by the Client may cause loss, damage or expense to Kaplan.

9.2 Obligation of confidentiality

The Client must (except as may be required by law or with Kaplan's prior written consent) maintain the secrecy and confidentiality of the Confidential Information. If this Agreement allows the Client to disclose Confidential Information to a third party, the Client must ensure that the third party agrees to guard the confidentiality of the Confidential Information on the same terms as set out in this Agreement.

9.3 Disclosure required by law

If the Client is required by law to disclose Confidential Information:

- (a) the Client will promptly give Kaplan written notice specifying the legal requirement and the Confidential Information to be disclosed; and
- (b) the Client will ensure that the relevant Confidential Information is disclosed in a manner which minimises the disclosure.

9.4 Injunctions

The Client acknowledges and agrees that a breach of this Agreement may cause Kaplan to suffer loss, damage and expense for which damages may not be adequate compensation and may be difficult to ascertain and that Kaplan may immediately seek to restrain any actual or threatened breach of this Agreement by injunction or any similar remedy.

10 Liability

10.1 Client's warranty

The Client represents and warrants that it has not relied on any representation made by Kaplan that has not been expressly stated in this Agreement.

10.2 Exclusion of implied warranties

Subject to this clause, any representation, warranty, condition or undertaking which (but for this clause) would be implied in this Agreement by law, is excluded.

10.3 Remedies

To the extent permitted by law, Kaplan's liability for any claim arising directly or indirectly from a breach of any non-excludable term or condition implied by statute (except for a breach of section 69 of the Trade Practices Act) is limited, at Kaplan option, to one or more of the following:

- (a) if the breach relates to the supply of goods: repairing or replacing the goods or supplying of equivalent goods, or paying the cost of repairing or replacing the goods or of acquiring equivalent goods; or
- (b) if the breach relates to the supply of services: supplying the services again or paying the cost of having the services supplied again.

10.4 Consequential loss

Kaplan is not liable to the Client for any special, incidental, indirect or consequential loss or damages, or loss of profits, loss of data, loss of business opportunity or liabilities in respect of third parties which may be suffered in connection with this Agreement, whether arising from breach of contract, breach of statute, tort (including any negligent act or omission) or otherwise.

10.5 Liability cap

To the extent that Kaplan's liability cannot be or is not otherwise limited according to this clause, Kaplan's total aggregate liability for all loss and damage suffered by the Client in connection with this Agreement, whether arising from breach of contract, breach of statute, tort (including any negligent act or omission) or otherwise, will not exceed the total amount of Fees received by Kaplan from the Client under this Agreement during the 12 months prior to the relevant event (less any amounts already paid to the Client under this clause in respect of that 12 month period).

10.6 Scope of limitations

Any provision of this Agreement which purports to exclude or limit the warranties given by or liability of Kaplan under this Agreement applies only to the maximum extent permitted by law.

11 Termination

11.1 Termination by either party

Either party may immediately terminate this Agreement by written notice if the other party:

- (a) becomes insolvent or enters into liquidation, receivership or other insolvency administration or makes a composition or arrangement with its creditors generally or takes advantage of any statute for the relief of insolvent debtors; or
- (b) breaches this Agreement and, except where the breach is a failure to pay any money due, fails to rectify the breach within 10 Business Days of receiving written notice from the other specifying the breach and requiring its rectification.

11.2 Termination or suspension by Kaplan

Kaplan may terminate this Agreement, or suspend the Client's right to access any Product covered by it, by written notice to the Client if:

- (a) the Client has not paid an amount due under this Agreement;
- (b) the Client commits a breach of this Agreement which cannot be remedied;
- (c) the Client suffers a change in control (as defined in section 50AA of the Corporations Act 2001) or ownership; or
- (d) Kaplan otherwise gives the Client 60 days written notice.

11.3 Termination by Client

The Client may terminate this Agreement if entitled under Clause 7.2(b).

11.4 Obligation on termination

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

- (a) pay all amounts owing under this Agreement;
- (b) cease accessing and using any Product; and
- (c) deliver to Kaplan or erase or destroy, or procure the delivery, erasure or destruction (at Kaplan option and as applicable) of, all copies of the Product and materials containing the Confidential Information.

11.5 Other remedies

Termination of this Agreement by Kaplan is without prejudice to its other rights in respect of this Agreement.

11.6 Survival

Clauses 9-13 survive the termination of this Agreement.

12 Product warranty and compatibility

12.1 Kaplan's warranty

Kaplan represents and warrants that to the best of its knowledge, use of the Product will not infringe the Intellectual Property Rights of any third party.

12.2 Exclusion of warranties

Kaplan does not warrant that:

- (a) the Product or the Website (if applicable) will operate free of errors, defects or in an uninterrupted manner; or
- (b) the Product is compatible or will inter-operate with any particular computer system or item of equipment, software (including operating systems) or data format other than as specified in any technical documentation accompanying the Product.

12.3 No financial advice

The Client acknowledges and agrees that any information or materials provided by Kaplan under this Agreement are provided for educational or training purposes only, do not constitute financial or other advice and cannot be relied on for providing advice.

12.4 No warranty as to accuracy

The information or material provided by Kaplan to the Client under this Agreement is believed to be accurate at the time it was prepared. However, to the extent legally permitted, Kaplan gives no warranty as to the accuracy or

comprehensiveness of the information or material and the Client must undertake its own verification enquiries before relying on the information or material.

12.5 Ownership of data and information

Kaplan retains ownership of all data and information generated using the Product or other services provided by Kaplan. Kaplan grants the Client a limited licence to use the data and information generated by use of the Product or provision of the services solely for the purposes contemplated by and on the terms of this Agreement.

12.6 Use of Client information

The Client consents to Kaplan using personal and other contact information provided by the Client under this Agreement for the purpose of informing the Client about other Kaplan or third party products, services or information which Kaplan thinks may be of interest to the Client. The Client also agrees to obtain consent from its personnel to the use of their personal and contact information by Kaplan for these purposes. The Client may withdraw consent at any time by written notice to Kaplan. This clause is subject to the provisions of any applicable law.

12.7 Disclosure of Client information

The Client consents to Kaplan disclosing any information concerning the Client's use of Kaplan products or services or the results of that use to ASIC and other regulatory or government bodies and to the Client's employer or prospective employer (if applicable) in the following situations:

- (a) where disclosure is legally required; and
- (b) in the case of disclosure to an employer or prospective employer, where the employer has paid for the Kaplan product or service or where the employer or prospective employer is seeking to verify information given to it by the Client concerning the Client's use of Kaplan's products or services.

13 General

13.1 Notices

Any notice or other communication to or by a party to this Agreement:

- (a) may be given by personal service, post or facsimile;
- (b) must be in writing addressed to the person at the address or fax number specified in the Details or the Subscription Form or to any other address last notified by the party to the sender by notice given in accordance with this clause;
- (c) is deemed to be given by the sender and received by the addressee:
 - (1) if delivered in person, when delivered to the addressee;
 - (2) if posted, 2 Business Days (or 6, if addressed outside Australia) after the date of posting to the addressee whether delivered or not; or
 - (3) if sent by facsimile transmission, on the date shown on the transmission report by the machine from which the facsimile was sent,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time) it is deemed to have been received at 9.00 am on the next Business Day.

13.2 Entire agreement

This Agreement contains the entire understanding and agreement of the parties concerning its subject matter and supersedes all previous oral or written representations or statements by either party. It may only be varied by a written document signed by each party.

13.3 Variation

(a) Kaplan may propose variations to this Agreement at any time by giving the Client at least 60 days prior written notice. If the variations:

1. do not reduce the Client's rights or increase its obligations, the variation will take effect on expiry of the notice period; or
2. do reduce the Client's rights or increase its obligations, the Client may within the notice period elect to reject the variations and terminate this Agreement, by writing (fax or post) to Kaplan. If the Client does not reject the variations and terminate this Agreement, the variations will take effect on expiry of the notice period. If the Client terminates this Agreement under this clause and has pre-paid any Fees in respect of the balance of the Term, then Kaplan will refund the amount of those pre-paid Fees to the Client.

(b) Kaplan reserves the right to recover any costs from the Client, incurred, as a result of the Client making changes to the terms and conditions of this Agreement.

13.4 Force majeure

Kaplan is not responsible or liable for any delay in or failure to perform any obligation under this Agreement due to causes or events beyond its reasonable control.

13.5 Nature of indemnities

Each indemnity in this Agreement:

- (a) is an additional, separate and independent obligation of the party giving that indemnity; and
- (b) survives the termination or expiration of this Agreement.

13.6 Severability

The invalidity or unenforceability of any one or more of the provisions of this Agreement does not invalidate or render unenforceable the remaining provisions of this Agreement.

13.7 Counterparts

If this Agreement consists of a number of counterparts, each is an original and all the counterparts together constitute the same document.

13.8 Assignment

The Client must not assign or otherwise deal with its rights under this Agreement without Kaplan's prior written consent. Kaplan may assign its rights under this Agreement.

13.9 Governing law

This Agreement is governed by and construed in accordance with New South Wales law, and the parties irrevocably submit to the jurisdiction of the Courts of that State and of the Commonwealth of Australia.

13.10 No solicitation of employees

The Client agrees not to Solicit any person who is employed by Kaplan, or any company associated with Kaplan. In this clause "Solicit" means solicit for employment or to provide services whether directly or indirectly through an associated or subsidiary company or otherwise, from the Commencement Date until the expiration of 12 months after this Agreement has terminated.

Annexure

Payment Refusals

Payments by cheque or credit card which are dishonoured or refused will incur an administration fee of \$100.

Backorders

Where a Backorder request is received after the 23rd of a given month, or on the previous Business Day where the 23rd is not a Business Day, such a request will incur the standard postage fee as detailed on the subscription form. The standard postage fee will not apply if the Backorder is required due to fault on Kaplan's part.

Delivery

Ten editions of the PDsessions program are released each year from February to November. Each monthly program is delivered in the first week of each month. Client must allow at least 5 business days for delivery.

Kaplan must deliver the Product by post or courier to the Designated Delivery Sites. The Client must allow a reasonable time for the Product's delivery when arranging training activities using the Product.

PART 3 - PRODUCT SPECIFICATIONS

The audio-visual content will consist of approximately 50 to 70 minutes of technical information concerning Australian financial planning practice.

The topics selected for each program will be determined by Kaplan in consultation with the Editorial Committee.