

RISC Platform and Website Terms of Use

Welcome to the Platform and Website of Risk Mitigators Pty Limited (ACN 620 666 097) ("we", "us", "Risk Mitigators" or the "Company").

This Platform, being the RISC platform, and the Website, being the website with information on Risk Mitigators and/or the RISC platform, are located on the web via the domain riskmitigators.com.au and/or other portals as appropriately designed and advised includes all of the files located in those domains ("**this Platform**").

This document is referred to as the "RISC Platform Terms" in the End-User Agreement,

1 Agreement to these Platform Terms of Use

1.1 By accessing this Platform and/or this Website, you agree to be bound by these terms of use ("**Platform Terms of Use**"). These Platform Terms of Use constitute a binding agreement between you and the Company and govern your use of this Platform.

Privacy Policy

1.2 As part of these Platform Terms of Use, your use of this Platform and/or this Website is also subject to our Privacy Policy which is incorporated by reference into these Platform Terms of Use.

Relevant Commercial Terms

1.3 As part of these Platform Terms of Use, your use of this Platform and/or this Website is also subject to the terms of any other relevant agreements between yourself and the Company, such as the relevant End-User Agreements or Partnership Agreements which is incorporated by reference into these Platform Terms of Use.

Legal capacity to transact

1.4 In respect of individuals, if you are under 18 years of age, you cannot use this Platform. By using this Platform you represent and warrant to the Company that you are over the age of 18 years, and have authority to act on behalf of any company you purport to represent. Should the Company suffer any damage or other losses as a result of a transaction entered into by a minor or by a person who does not have sufficient authority on behalf of a company, we reserve the right to seek compensation for such losses from his/her parents or guardians or the company in question.

Warranties

1.5 You, as an End User of the Platform and Website and/or any other Software, agree and warrant, each of the End User Warranties contained in Schedule 3.

1.6 You represent and warrant to Risk Mitigators that each of the End User Warranties is true, accurate and not misleading by reference to the facts, matters and circumstances existing at the time this Agreement is entered into and on an ongoing basis for the term of this Agreement and any renewals, and each and every time you use the Platform, Website or any Software.

1.7 You acknowledge that Risk Mitigators enters into this agreement on the basis of, and in reliance on, the End User Warranties.

- 1.8 Each of the End User Warranties is separate and is not limited by reference to any other End User Warranty or any other provision of this agreement.

2 Restrictions on use

Prohibited conduct

- 2.1 Your use of this Platform and/or this Website is subject to the rules regarding Prohibited Conduct set out in Schedule 1 below and the Acceptable Use Policy set out in Schedule 2 below.

Violations of these Platform Terms of Use

- 2.2 Without limiting any other remedies available to the Company at law or in equity, the Company reserves the right to, without notice, temporarily or indefinitely suspend, or terminate, your access to this Platform and/or this Website or refuse to provide services to you if:
- (a) you breach any provision of these Platform Terms of Use;
 - (b) you breach any provision of the End-User Agreements;
 - (c) you breach any provision of the Partnership Agreements;
 - (d) the Company is unable to verify or authenticate any information that you provide to us; or
 - (e) the Company believes that your actions may cause damage and/or legal liability to the Company, any of its customers or suppliers or any other person.

Indemnity

- 2.3 You indemnify and hold harmless the Company and its officers, employees, agents, consultants, licensors, partners and affiliates from and against any losses, liabilities, costs, expenses or damages (including actual, special, indirect and consequential losses or damages of every kind and nature, including all legal fees on a solicitor-client basis) suffered or incurred by any of them due to, arising out of, or in any way related to (directly or indirectly):
- (a) any material or information that you submit, post, transmit or otherwise make available through this Platform and/or this Website;
 - (b) your use of, or connection to, this Platform and/or this Website; or
 - (c) your negligence or misconduct, breach of these Platform Terms of Use or violation of any law or the rights of any person; or
 - (d) any outages of this Platform and/or this Website whether caused by you, the Company or a third party.
- 2.4 You further indemnify the Company in respect of any damage or loss suffered by you or your clients in respect of data held or placed onto the Platform and/or this Website, and also in respect of any failures by the hosted service provider. You also expressly acknowledge that the Platform is hosted by third party providers, and the Company is in no way responsible for the services provided by those providers.
- 2.5 You may not assign or licence any of your obligations and rights without the prior written consent of Risk Mitigators.

- 2.6 You must ensure that any and all assignees and/or licensees of the End User:
- (a) comply with the obligations in this agreement as if each of them was a party to this agreement in the place of the End User; and
 - (b) do not do, or omit to do, anything which, if done or omitted to be done by the End User, would constitute a breach of this agreement by the End User,

and the End User will be responsible for, and liable to Risk Mitigators in respect of, the actions and/or omissions of any and all assignees and sub-licensees of the End User as if they were the actions and/or omissions of the End User.

3 Registration and account security

Requirement for registration

- 3.1 The Company reserves the right to make any parts of this Platform accessible only to users who have registered.

Username and password

- 3.2 Upon registration with this Platform, you will be issued with a username and password to access your account. You are responsible for maintaining the security of your password for this Platform. The Company will not be liable for any loss or damage arising from or in connection with your failure to comply with this security obligation. You agree that the Company will be entitled to assume that any person using this Platform with your username and password is you or your authorised representative.
- 3.3 You must notify the Company immediately of any known or suspected unauthorised use of any password or any other breach of security.

User information

- 3.4 In order to register an account with this Platform, you must agree to these Platform Terms of Use and provide the Company with:
- (a) a valid email address;
 - (b) accurate billing and contact information (including your street address and the name and telephone number of your authorised billing contact and administrator); and
 - (c) any other information that may be required by the Company during the registration process.
- 3.5 You must promptly update this information to maintain its accuracy at all times.
- 3.6 You represent and warrant to the Company that all information provided to the Company by you, including the information provided by you through our account registration module or entered into your account profile, is true and not misleading and does not violate any applicable law or regulation or any person's intellectual property or other rights.

Multiple accounts and automated account opening

- 3.7 One person may not maintain more than one account with this Platform. Accounts registered by "bots" or other automated methods are not permitted.

Approval of registrations

- 3.8 The Company reserves the right to accept or reject any application for registration of an account with this Platform at its discretion.

4 Prices

- 4.1 The Company reserves the right to change the prices for services displayed in this Platform or for the use of the Platform at any time.

GST

- 4.2 Unless otherwise expressly stated, all amounts payable through your use of this Platform are expressed to be exclusive of GST. For these purposes, the term "GST" has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 4.3 If any GST is payable on any taxable supply, the recipient must pay the GST to us on the earlier of:
- (a) the time of making payment of any monetary consideration on which the GST is calculated; and
 - (b) the issue of an invoice relating to the taxable supply.
- 4.4 The recipient must pay the GST in the same manner as making payment of any monetary consideration on which the GST is calculated. We must provide, as a precondition to payment by the recipient of the GST, a tax invoice or a document that the Commissioner will treat as a tax invoice.
- 4.5 The amount recoverable on account of GST under this clause by us will include any fines, penalties, interest and other charges incurred as a consequence of any late payment or other default by the recipient under this clause.
- 4.6 If any party is required to pay, reimburse or indemnify another party for the whole or any part of any cost, expense, loss, liability or other amount that the other party has incurred or will incur in connection with this agreement, the amount must be reduced by the amount for which the other party (or representative member if this is not the other party) can claim an input tax credit, partial input tax credit or other similar offset.

5 Payment methods

- 5.1 Payment through this Platform may be made via direct bank deposit by electronic funds transfer (EFT) unless otherwise directed by us (in writing and by telephone).

Third party payment gateways

- 5.2 The Company may use one or more third-party payment gateways to facilitate secure online payment transactions. Payments made through such payment gateways are subject to the terms and conditions and privacy policy of the relevant third-party providers. Unless you expressly consent otherwise, we do not see or have access to any personal information that you may provide to such third party payment gateway

providers, other than information that is required in order to process your order and deliver your purchased items to you (eg, your name, email address and billing address).

Payment by EFT

- 5.3 If you elect to pay for an order by direct deposit using EFT, we will send you an email containing instructions for making the payment, or otherwise provide such information to you, including our bank account details and the reference number for your order. Please quote the reference number for the EFT transaction in order to avoid delays.
- 5.4 It is your responsibility to ensure that the banking details are correct including contacting us in writing and by telephone to ensure accuracy. If payment is not received by us, then the amount will remain due and owing by you.

Refunds and other remedies

- 5.5 Except as expressly provided otherwise in these Platform Terms of Use, all amounts paid are non-refundable.

Security

- 5.6 While our third party payment gateway and Platform hosting providers employ secure technology for transactions with our customers, we will not be responsible for any damages, including consequential losses (whether direct or indirect), that may be suffered by a customer whose credit or debit card or bank account information is used in a fraudulent or unauthorised manner by any person other than the Company.
- 5.7 The Company may request further information from you, such as a copy of your credit card and/or other identification documentation, as part of our internal validation procedures. These procedures help protect bank and credit card account holders from online fraud. Until your order has passed our internal fraud prevention checks, your order will remain on pending status. If further information is requested and you do not provide the requested information within such time as the Company considers appropriate at its discretion, your order will be cancelled and, if your payment has been received, it will be refunded back to you.
- 5.8 If any payment is late, then without prejudicing any other rights the Company may have under this Agreement, you must pay:
- (c) interest on the late payment in accordance with section 101 of the Civil Procedure Act 2005 (NSW), and
 - (d) an administrative fee of 10% of the amount outstanding per reminder email, letter and/or phone call or other form of correspondence, and
 - (e) any and all debt recovery and legal costs incurred by us in respect of the outstanding amount.
- 5.9 The parties acknowledge and agree that unless otherwise required by law, all amounts payable by you are to be paid without set-off, counterclaim, withholding, deduction or claim to a lien whatsoever (whether or not any such set-off, counterclaim, withholding, deduction or lien arises under this agreement).
- 5.10 If a party is required by law to make a deduction or withholding in respect of any sum payable under this agreement, that party must, at the same time as the sum that is the subject of the deduction or withholding is payable, make a payment to the recipient of such additional amount as is required to ensure that the net amount

received by the recipient will equal the full amount that would have been received by it had no such deduction or withholding been required to be made.

6 Dealings with third parties

Linking our Platform on third-party Platforms

- 6.1 Subject to our prior written approval, you may link our Platform to third party platforms, provided you do so in a way that is fair and legal and does not damage our reputation or take advantage of it.
- 6.2 You must not establish a link in such a way as to suggest any form of association, approval or endorsement on our part where none exists.
- 6.3 Our platform must not be framed on any other Platform without our consent. We reserve the right to withdraw linking permission without notice.

Third party goods/services and platforms

- 6.4 We do not recommend or endorse any third party goods or services that are listed, advertised or referred to in this platform or the content of any third party platforms. We are not responsible for the content of linked third party platforms, websites framed within this platform or third party advertisements and we do not make any representations, or provide any guarantees or warranties, regarding their content or accuracy. These links may unintentionally connect with platforms containing information that some users may find inappropriate or offensive. Your use of any third party platforms is at your own risk and subject to their respective terms and conditions of use.

No advice

- 6.5 No information given on the Platform, online or dispensed in any other format purports to provide you with financial product or investment advice of any kind. The Company does not take account of your particular financial or insurance position or requirements. The Company advises before using this Platform, materials, documents, templates and any other intellectual property, information emanating from the site, that you must seek independent legal and/or insurance advice.

User acknowledgements

- 6.6 You acknowledge that the Company does not:
 - (a) check the truth or currency of any of the material or information that you or third parties provide or make available through this platform;
 - (b) control, endorse, approve or warrant to you the merchantability or fitness for any particular purpose of any of the goods or services of any third parties referred to in this platform or whose identities become known to you through this platform, including suppliers of content that is published or made available in or through this platform;
 - (c) offer professional advice on the quality or suitability of any goods, services or information supplied by any such third parties; or
 - (d) endorse or recommend any third party supplier or any third party goods or services, including where details of the relevant supplier are provided by the Company to you or otherwise become known to you through this platform.

Role of the Company

- 6.7 The relevant supplier, and not the Company, is:
- (a) the supplier of the goods and/or services that you offer to purchase; and
 - (b) solely responsible for supplying you with those goods and/or services and for those goods/services themselves.
- 6.8 We do not act as agent for the supplier and we make no representation or warranty, and provide no guarantee, that the supplier will provide you with the goods and/or services that you offer to purchase through this platform, or that those goods/services will meet your expectations. You should satisfy yourself through your own enquiries as to the quality or suitability of any supplier listed on this platform and any goods or services supplied, offered or recommended by or on behalf of a supplier.

Disputes between users and suppliers

- 6.9 You are solely responsible for your interactions with suppliers listed on this platform and the Company is not a party to any transactions between you and such suppliers. We reserve the right, but have no obligation, to monitor and take action regarding any disputes between users and suppliers.
- 6.10 If you believe that any supplier from which you have purchased any goods or services through this platform has failed to provide those goods or services to you, or that those goods or services did not meet your expectations, please contact us to let us know. The Company will not, however, act on your behalf, or on behalf of any supplier, in respect of any dispute between you and a supplier.

7 Intellectual property

Copyright

- 7.1 In these Platform Terms of Use, the term "**Proprietary Content**" means:
- (a) this Platform and/or this Website;
 - (b) all of its content (including all of the text, graphics, designs, software, data, sound and video files and other information contained in this Platform, and the selection and arrangement thereof); and
 - (c) all software, systems and other information owned or used by the Company in connection with the services offered through this Platform (whether hosted on the same server as this Platform or otherwise).
- 7.2 All Proprietary Content is the property of the Company or its licensors (as applicable) and is protected by Australian and international copyright laws. You must not reproduce, transmit, republish or prepare derivative works from any of the Proprietary Content, except as expressly authorised by these Platform Terms of Use or with the prior written consent of the Company or other copyright owner (as applicable).
- 7.3 You may download and print out content from this Platform only for your own use and provided that you do not remove or modify any copyright, trademark or other proprietary notices, provided that it is not used to on-sell or generate a profit.
- 7.4 You:

- (a) acknowledge and agree that you are not acquiring any Intellectual Property Rights in or to the Platform and that the Company owns and retains title to the Platform; and
- (b) must not take any step to invalidate or prejudice the Company's title thereto.

Trademarks

7.5 The Company's logo is a trademark of the Company. The look and feel of this Platform and/or this Website (including all button icons, scripts, custom graphics and headers) are the trademarks, service marks and/or trade dress of the Company. These trademarks, service marks and trade dress may not be used, copied or imitated, in whole or in part, without the prior written consent of the Company.

Copyright claims

7.6 If you believe that our Platform and/or this Website contains any material that infringes upon any copyright that you hold or control, or that users are directed through a link on this Platform to a third party Platform that you believe is infringing upon any copyright that you hold or control, you may send a notification of such alleged infringement to us in writing. Such notification should identify the works that are allegedly being infringed upon and the allegedly infringing material and give particulars of the alleged infringement. In response to such a notification, we will give a written notice of a claim of copyright infringement to the provider of the allegedly infringing material. If the provider of that material does not respond to us in writing denying the alleged infringement within 14 days after receipt of that notice, we will remove or block the allegedly infringing material as soon as is reasonably practicable. If the provider of that material responds to us in writing denying the alleged infringement, we will, as soon as is reasonably practicable, send a copy of that response to the original notifying party. If the original notifying party does not, within a further 14 days, file an action seeking a court order against the provider of the allegedly infringing material, we may restore any removed or blocked material at our discretion. If the original notifying party files such a legal action, we will remove or block the allegedly infringing material pending resolution of that legal action.

7.7 Each party must promptly notify the other of:

- (a) any actual or suspected infringement of the Proprietary Content that comes to its attention; and
 - (b) any attack or challenge to any registration of any Proprietary Content,
- (each an ***IP Ownership Claim***).

7.8 Risk Mitigators will have absolute discretion to decide what action to take in respect of any IP Ownership Claim and sole conduct of any related legal proceedings (including any legal proceedings conducted in the name of Risk Mitigators or in the joint names of Risk Mitigators and you). Accordingly, you must:

- (a) not bring any legal proceedings in respect of any IP Ownership Claim without the prior written consent of Risk Mitigators; and
- (b) cooperate fully with Risk Mitigators, and take all steps requested by Risk Mitigators in their discretion, in defending any IP Ownership Claim, provided that Risk Mitigators will be responsible for the cost of any related legal proceedings and entitled to any damages, account of profits and/or awards of costs recovered in respect thereof,

- (c) and you must ensure that any and all of your assignees or sub-licensees do the same.

8 Disclaimer of warranties

- 8.1 TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE COMPANY AND ITS OFFICERS, EMPLOYEES, AGENTS, CONSULTANTS, LICENSORS, PARTNERS AND AFFILIATES EXPRESSLY DISCLAIM ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES (WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE) IN RELATION TO THIS PLATFORM AND ANY SERVICES PURCHASED OR OBTAINED THROUGH THIS PLATFORM, INCLUDING ANY IMPLIED WARRANTY/GUARANTEE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.
- 8.2 This Platform and/or this Website is provided strictly on an "as is" basis. To the maximum extent permitted by law, the Company and its officers, employees, agents, consultants, licensors, partners and affiliates make no representation, warranty or guarantee as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of this Platform or any of its content, and in particular do NOT represent, warrant or guarantee that:
 - (a) Anything contained in the platform, downloads or programs or risk advice constitutes financial advice;
 - (b) Your usage or viewing of this website creates a relationship of any kind, a professional relationship between yourself and Us shall only exist once you have signed an agreement with us;
 - (c) the use of this Platform and/or this Website will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data;
 - (d) this Platform and/or this Website will meet your requirements or expectations;
 - (e) anything on this Platform and/or this Website, or on any third-party referred or linked to in this Platform and/or this Website, is reliable, accurate, complete or up-to-date;
 - (f) the quality of any services, information or other material purchased or obtained through this Platform and/or this Website will meet any particular requirements or expectations;
 - (g) errors or defects will be corrected;
 - (h) this Platform and/or this Website or the servers that make it available are free of viruses or other harmful components; or
 - (i) the third party hosts of the Platform and/or this Website will provide hosting services that are secure, timely, uninterrupted or error-free

9 Limitation of liability

Exclusion of liability

- 9.1 To the maximum extent permitted by law, the Company and its officers, employees, agents, consultants, licensors, partners and affiliates exclude all liability to you or any

other person for any loss, cost, expense, claim or damage (whether arising in contract, negligence, tort, equity, statute or otherwise, and for any loss, whether it be consequential, indirect, incidental, special, punitive, exemplary or otherwise, including any loss of profits, loss or corruption of data or loss of goodwill) arising directly or indirectly out of, or in connection with, these Platform Terms of Use or the use of this Platform by you or any other person.

Remedies limited

9.2 To the maximum extent permitted by law, the Company and its officers, employees, agents, consultants, licensors, partners and affiliates expressly limit their liability for breach of any non-excludable condition or warranty/guarantee implied by virtue of any legislation to the following remedies (the choice of which is to be at the Company's sole discretion) to the supply of the services again; or the payment of the cost of having the services supplied again.

9.3 This clause 9 limits the liability of Risk Mitigators in relation to, and only in relation to, any Claim against Risk Mitigators.

9.4 Nothing in this clause applies to a Claim that arises or is delayed as a result of any dishonesty, fraud, wilful misconduct or wilful concealment by Risk Mitigators.

Substantiation

9.5 Risk Mitigators will not be liable in respect of a particular Claim unless and until:

- (a) liability has been admitted by Risk Mitigators; or
- (b) the Claim has been adjudicated on in favour of you by a court of competent jurisdiction and no right of appeal lies in respect of such adjudication or Risk Mitigators are prevented by the passage of time or otherwise from making an appeal.

Notice

9.6 As soon as reasonably practicable after you become aware of any fact, matter or circumstance that is likely to give rise to a Claim against Risk Mitigators, the you must give notice to Risk Mitigators specifying in reasonable detail (having regard to the facts of which you are actually aware):

- (a) that fact, matter or circumstance;
- (b) the nature of the damage that the End User has or will suffer;
- (c) the particular breaches of this Agreement pursuant to which the Claim is made; and
- (d) a bona fide estimate, made in good faith, of the quantum of the damage that the End User is reasonably likely to suffer as a result of the alleged breach.

Time limits

9.7 Risk Mitigators will not be liable in respect of a Claim unless you have:

- (a) given Risk Mitigators written notice of the Claim in accordance with this Agreement on or before the date that is 28 days after the date of the alleged breach; and

- (b) if liability is not admitted by Risk Mitigators, commenced legal proceedings in respect of that Claim on or before the date that is 2 months after the date on which notice of the Claim in accordance with this Agreement (or deemed to have been received) by the Risk Mitigators.

Minimum size

- 9.8 Risk Mitigators will not be liable in respect of a particular Claim unless the amount of:
- (a) that Claim; or
 - (b) a series of connected Claims of which that Claim is one, exceeds AUD 50,000.00.

Maximum aggregate liability

- 9.9 The maximum aggregate liability of Risk Mitigators in respect of all Claims against Risk Mitigators when taken together is the maximum amount paid by you to Risk Mitigators, and in any event is no greater than AUD 50,000.00, whichever is lower.

Mitigation

- 9.10 Risk Mitigators will not be liable in respect of a Claim, and you must not make a Claim, to the extent that it arises or is increased as a result of any breach of this agreement, or of any agreement entered into pursuant to this agreement, by you or a third party.
- 9.11 You must not pay, settle, compromise, agree to arbitrate or admit liability in relation to:
- (a) any Claim against Risk Mitigators by a third party; or
 - (b) any legal proceedings that are likely to lead to liability on the part of the Risk Mitigators,
- without the prior written consent of Risk Mitigators (such consent not to be unreasonably withheld or delayed).
- 9.12 Nothing in this agreement relieves you from your duty at law to mitigate any loss or damage incurred by it.

Insurance

- 9.13 If, in respect of any matter that would otherwise give rise to a Claim against Risk Mitigators, the you are entitled to claim under any policy of insurance, the amount of the Claim against Risk Mitigators is taken to be reduced by the amount of insurance monies to which you are entitled.

Changes in law

- 9.14 Risk Mitigators will not be liable in respect of any Claim to the extent that it would not have arisen but for a change in legislation, or the withdrawal of any extra-statutory concession previously made by any Governmental Agency, first announced after the date of this agreement (whether or not the change or withdrawal purports to be effective retrospectively in whole or in part).

Further Limitation

9.15 Risk Mitigators will not be liable for any damages or loss suffered as a result of a third party, including but not limited to the hosting service Risk Mitigators.

9.16 Risk Mitigators will not be liable for any damages or loss suffered as a result of the Platform or Website or Software becoming unavailable or otherwise unusable, and in respect of the same, for any outages of the licenced software including for scheduled maintenance.

9.17

Release

9.18 You agree that your use of this Platform and/or this Website is at your own discretion and risk. You agree to release the Company and its officers, employees, agents, consultants, licensors, partners and affiliates from any claim, demand or cause of action that you may have against any of them arising from these Platform Terms of Use or the use of this Platform by you or any other person. The Company may plead this release as a bar and complete defence to any claims or proceedings.

Force majeure

9.19 To the maximum extent permitted by law, and without limiting any other provision of these Platform Terms of Use, the Company excludes liability for any delay in performing any of its obligations under these Platform Terms of Use where such delay is caused by circumstances beyond the reasonable control of the Company, and the Company shall be entitled to a reasonable extension of time for the performance of such obligations.

10 Confidentiality

10.1 Each party must:

- (a) not, without the prior written consent of the other party, use or disclose any of the other party's Confidential Information except as expressly permitted to do so by this agreement or as required by law or any regulatory authority;
- (b) use the other party's Confidential Information solely for the purposes of complying with its obligations and exercising its rights under this agreement;
- (c) implement and maintain effective security measures to prevent unauthorised use and disclosure of the other party's Confidential Information whilst it is in the first-mentioned party's possession or control; and
- (d) return or, at the other party's option, destroy all Confidential Information of the other party that is in the first-mentioned party's possession or control upon request by the other party or the expiry, revocation or termination of this agreement for any reason.

10.2 A party may disclose the other party's Confidential Information to the first-mentioned party's employees or professional advisors but only to the extent that they have an actual need to know the Confidential Information in order for the first-mentioned party to properly perform its obligations under this agreement. The first-mentioned party must ensure that all such employees and professional advisors:

- (a) comply with the obligations in this agreement as if each of them was a party to this agreement in its place; and

- (b) do not do, or omit to do, anything which, if done or omitted to be done by it, would constitute a breach of this agreement by it,

and you acknowledge and agree that you will be responsible for, and liable to Risk Mitigators in respect of, the actions and omissions of any and all of the aforementioned employees and professional advisors in relation to such Confidential Information as if they were your own actions or omissions.

11 Privacy and Data protection

- 11.1 Each party shall comply with the data protection laws with respect to the processing of the End User Data. Risk Mitigators will only collect, share and process End User Data for the express purposes of providing services under the terms of this Agreement and in accordance with Risk Mitigators' Privacy Policy.
- 11.2 You warrant to Risk Mitigators that you have the legal right to disclose all data that you do in fact disclose to Risk Mitigators.
- 11.3 Risk Mitigators shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist you with the fulfilment of the your obligation to respond to requests exercising a data subject's rights under the data protection laws, subject to reasonable administration fees.
- 11.4 Risk Mitigators shall assist you in ensuring compliance with the obligations relating to the security of processing of data, the notification of data breaches to the supervisory authority, the communication of data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the data protection laws. Risk Mitigators may charge you for any work performed by Risk Mitigators at your request pursuant to this Clause.
- 11.5 Risk Mitigators must notify you of any data breach affecting the End User Data without undue delay and, in any case, not later than 7 days after Risk Mitigators becomes aware of the breach.
- 11.6 Risk Mitigators shall, at your choice, delete or return all of the End User Data to you after the provision of services relating to the processing, and shall delete existing copies save to the extent that any applicable law requires storage of the relevant data.

12 Revocation and termination

Termination for breach

- 12.1 Each party may terminate this agreement with immediate effect by written notice to the other party if:
 - (a) the other party materially breaches this agreement;
 - (b) an Insolvency Event occurs in respect of the other party; or
 - (c) a Force Majeure Event preventing the performance of this agreement continues for more than 20 Business Days.

Payment obligations

- 12.2 In no event shall termination of this agreement release you from the obligation to pay any amounts that became due and payable on or before the date of termination.

Survival

- 12.3 Termination of this agreement for whatever reason will not affect or prejudice:
- (a) any rights or liabilities that the parties have accrued under it prior to such termination; or
 - (b) the provisions of this agreement that expressly or by their nature survive termination.

Termination for convenience

- 12.4 In addition, Risk Mitigators may at any time terminate the Agreement on 14 days' written notice.
- 12.5 Risk Mitigators will not be liable for any damage suffered by you in respect of any termination notice issued in accordance with the terms of this Agreement.

13 Notices

- 13.1 A notice given to a party under this agreement must be:
- (a) in writing in English;
 - (b) sent to the address, or email address of the relevant party as provided in writing from time to time or as listed on ASIC as the registered address; and
 - (c) delivered/sent either:

personally;

by commercial courier;

by pre-paid post;

if the notice is to be served by post outside the country from which it is sent, by airmail;

by e-mail.

- 13.2 A notice is deemed to have been received:
- (a) if delivered personally, at the time of delivery;
 - (b) if delivered by commercial courier, at the time of signature of the courier's receipt;
 - (c) if sent by pre-paid post, 48 hours from the date of posting;
 - (d) if sent by airmail, five days after the date of posting; or
 - (e) if sent by e-mail, 4 hours after the sent time (as recorded on the sender's e-mail server), unless the sender receives a notice from the party's email server or internet service Risk Mitigators that the message has not been delivered to the party,

except that, if such deemed receipt is not within business hours (meaning 9:00 am to 5:30 pm on a Business Day), the notice will be deemed to have been received at the next commencement of business hours in the place of deemed receipt.

- 13.3 To prove service, it is sufficient to prove that:

- (a) in the case of post – that the envelope containing the notice was properly addressed and posted; and
- (b) in the case of email – the email was transmitted to the party’s email server or internet service Risk Mitigaters.

14 General

Interpretation

- 14.1 In these Platform Terms of Use, following rules of interpretation apply in this agreement unless the context requires otherwise:
- (a) the definitions set out in Schedule 4 apply;
 - (b) headings in this agreement are for convenience only and do not affect its interpretation or construction;
 - (c) no rule of construction applies to the disadvantage of a party because this agreement is prepared by (or on behalf of) that party;
 - (d) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
 - (e) a reference to a document (including this agreement) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
 - (f) references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this agreement;
 - (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
 - (h) an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Governmental Agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;
 - (i) a reference to writing includes any communication sent by post or email;
 - (j) a reference to time refers to time in Sydney, New South Wales and time is of the essence;
 - (k) all monetary amounts are in Australian currency;
 - (l) the word “**month**” means calendar month and the word “**year**” means 12 calendar months;
 - (m) the meaning of general words is not limited by specific examples introduced by “**include**”, “**includes**”, “**including**”, “**for example**”, “**in particular**”, “**such as**” or similar expressions;

- (n) a reference to a “**party**” is a reference to a party to this agreement and a reference to a “**third party**” is a reference to a person that is not a party to this agreement;
- (o) a reference to the termination of this agreement includes a reference to the expiry or revocation of the agreement in accordance with the terms of this agreement;
- (p) a reference to a liability includes a reference to a present, prospective, future or contingent liability;
- (q) a reference to any thing is a reference to the whole and each part of it;
- (r) a reference to a group of persons is a reference to all of them collectively and to each of them individually; and
- (s) words in the singular include the plural and vice versa.

Costs

- 14.2 Except as specifically provided in these Platform Terms of Use, each party must bear its own legal, accounting and other costs associated with these Platform Terms of Use.

Assignment

- 14.3 You may not assign, transfer or sub-contract any of your rights or obligations under these Platform Terms of Use without the Company's prior written consent. Your registration with this Platform is personal to you and may not be sold or otherwise transferred to any other person.
- 14.4 The Company may assign, transfer or sub-contract any of its rights or obligations under these Platform Terms of Use at any time without notice to you.

No waiver

- 14.5 Waiver of any power or right under these Platform Terms of Use must be in writing signed by the party entitled to the benefit of that power or right and is effective only to the extent set out in that written waiver. Any failure by the Company to act with respect to a breach by you or others does not waive the Company's right to act with respect to that breach or any subsequent or similar breaches.

Severability

- 14.6 The provisions of these Platform Terms of Use are severable and, if any provision of these Platform Terms of Use is held to be illegal, invalid or unenforceable under present or future law, such provision may be removed and the remaining provisions shall be enforced.

Ipsa facto legislation

- 1.1 If any provision of this agreement is otherwise unenforceable by virtue of the operation of the *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth), upon the occurrence of an Insolvency Event in respect of a particular party, notwithstanding any other provision of this agreement, to the maximum extent permitted by law:

- (a) time is of the essence in respect of all obligations of that party under this agreement (whether falling due for performance before, upon or after the occurrence of that Insolvency Event); and
- (b) any breach of this agreement by that party (whether occurring before, upon or after the occurrence of that Insolvency Event), however minor, will (alone or, severally, in combination with the occurrence of that Insolvency Event) be deemed to be a material breach of this agreement,
- (c) and, if any such material breach has occurred or occurs, the parties acknowledge and agree that such provision will instead be enforceable by virtue of the occurrence of that material breach.

Variation

- 1.2 The Company reserves the right to amend these Platform Terms of Use and any other policy on this Platform at any time in its sole discretion and any such changes will, unless otherwise noted, be effective immediately. Your continued usage of this Platform will mean you accept those amendments. We reserve the right, without notice and at our sole discretion, to change, suspend, discontinue or impose limits on any aspect or content of this Platform or the services offered through this Platform.
- 1.3 You may only vary or amend these Platform Terms of Use by written agreement with the Company.

Termination

- 1.4 We may terminate this agreement or your licence to use the Platform at any time, by providing you with written notice.

Governing law and jurisdiction

- 1.5 These Platform Terms of Use will be governed in all respects by the laws of New South Wales. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales and the courts of appeal from them.

Feedback

- 1.6 Any feedback, comments, suggestions, information and other communications regarding the Software provided by the Licensee to the Licensor:
 - (a) will remain the exclusive property of the Licensor and the Licensee will relinquish any right, title or interest in such feedback thereto, immediately upon it being sent to the Licensor;
 - (b) will entitle the Licensor to Exploit any such feedback for any purpose whatsoever without restrictions; and
 - (c) will not entitle the Licensee to any compensation for any such feedback.

Schedule 1 – Prohibited conduct

YOU MUST NOT:

- 1.1 use any device, routine or software that interferes, or attempt to interfere, with the proper working of this Platform;
- 1.2 engage in any action that requires, or may require, an unreasonable or excessively large load on our infrastructure;
- 1.3 use this Platform to decipher passwords or security encryption codes, transmit any worms, viruses or Trojan horses, transfer or store illegal, threatening or obscene material or otherwise violate the security of any computer network;
- 1.4 use this Platform to violate any applicable local, state, national or international law, to engage in any misleading or deceptive online marketing practices or for any fraudulent or malicious purposes;
- 1.5 use any spider, robot or search/retrieval application or any screen scraping, data mining or similar data gathering device, process, program or means to access, retrieve or index any portion of this Platform;
- 1.6 use this Platform by any automated means;
- 1.7 use this Platform to transmit junk mail, spam or chain letters or pyramid schemes or engage in other flooding techniques or mass distribution of unsolicited email;
- 1.8 access, retrieve or index any portion of this Platform for use in constructing or populating any database that is searchable online or for the purpose of soliciting or sharing reviews;
- 1.9 interfere with the display of any advertisements appearing on or in connection with this Platform;
- 1.10 reverse engineer, decompile, disassemble, adapt, modify, translate, frame or reformat any of the material contained on this Platform;
- 1.11 reproduce, duplicate, copy or store any of the material appearing on this Platform other than for your own personal and non-commercial use;
- 1.12 falsely imply that any other Platform is associated with this Platform;
- 1.13 do anything that leads, or may lead, to a decrease in the value of the Company's intellectual property rights in this Platform;
- 1.14 use or exploit any of the material appearing on this Platform for, or in connection with, any business or enterprise (whether for profit or otherwise), including any business or enterprise that is in competition with this Platform;
- 1.15 (non-solicitation of clients and suppliers) interfere with or disrupt, or attempt to interfere with or disrupt, any relationship, whether contractual or otherwise, between Risk Mitigators and any of Risk Mitigators' clients, suppliers, distributors or joint venture partners, or identified prospective clients, suppliers, distributors or joint venture partners, including any such clients, suppliers, distributors or joint venture partners to whom the End User was introduced, or in respect of whom carried out any work on behalf of Risk Mitigators;

- 1.16 (non-solicitation of staff) induce, encourage or solicit any of Risk Mitigators' officers, employees, contractors or agents with whom the End User worked or had any personal contact in connection with the Relevant IP to cease their employment, engagement or agency with Risk Mitigators
- 1.17 release to the public any news release, advertising material, promotional material or any other form of publicity or information relating to the Company without the Company's prior written consent; or
- 1.18 use this Platform to transmit any information or material that is, or may reasonably be considered to be:
- abusive, threatening, harassing, harmful, obscene, indecent, lewd, inflammatory, violent, vulgar, profane, racially, ethnically or otherwise objectionable or offensive in any way;
 - libellous, defamatory, pornographic, sexually explicit, unlawful or plagiarised;
 - infringing upon or violating any copyright, trademark, patent or other intellectual property or proprietary right;
 - in breach of any duty of confidentiality by which you are bound, whether by way of a fiduciary or contractual relationship;
 - in breach of any person's privacy or publicity rights;
 - a misrepresentation of facts, including the impersonation of any person or entity or a misrepresentation of an affiliation with any person or entity (including any sponsorship or endorsement);
 - in violation of any applicable law, statute, ordinance or regulation, or encouraging of others to do so;
 - containing any political campaigning material, advertisements or solicitations; or
 - likely to bring the Company or any of its staff into disrepute.
- 1.19 All Prohibited Conducted outlined in Schedule 1, begin on the date you enter into an Agreement with Risk Mitigators and/or the day you begin using the Platform or Website (or any other Software) and end:
- 36 months after the Agreement is terminated;
 - Or if (i) is unenforceable, 24 months after the Agreement is terminated; and
 - Or if (ii) is unenforceable, 12 months after the Agreement is terminated.
- 1.20 This Schedule 1 has effect as if it were separate and independent clauses, each one being severable from the others and consisting of the covenants set out combined with each separate period referred to.
- 1.21 If any of these separate clauses are void, invalid or unenforceable for any reason, it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidity or unenforceability and will not affect the validity or enforceability of any other separate clause or other combinations of the separate provisions of this Schedule

Schedule 2 | Acceptable Use Policy

1 Introduction

- 1.1 This acceptable use policy (the "**Policy**") sets out the rules governing:
- (a) the use of [the website accessible via <https://www.riscsurveys.com.au/login.aspx>, any successor website, and the services available on that website or any successor website or as otherwise advised by Risk Mitigators (the "**Services**")]; and
 - (b) the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("**Content**").
- 1.2 References in this Policy to "you" are to any End User for the Services and any individual user of the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to the Risk Mitigators (and "we" and "our" should be construed accordingly).
- 1.3 By using the Services, you agree to the rules set out in this Policy.
- 1.4 We will ask for your express agreement to the terms of this Policy before you upload or submit any Content or otherwise use the Services].
- 1.5 You must be at least 18 years of age to use the Services; and by using the Services, you warrant and represent to us that you are at least 18 years of age.

2 General usage rules

- 2.1 You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.
- 2.2 You must not use the Services:
- (a) in any way that is unlawful, illegal, fraudulent, deceptive or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent, deceptive or harmful purpose or activity.
- 2.3 You must ensure that all Content complies with the provisions of this Policy.
- 2.4 You must:
- (a) only disclose account access details to your representatives on a need-to-know basis;
 - (b) contact us immediately if you has any reason to believe that any passwords have been compromised or used without your authority;
 - (c) keep all account access details secure and confidential and inform any users to change their passwords whenever directed to do so by us;
 - (d) where directed, provide us with details of any other professional parties linked to your account;
 - (e) comply with any of our other policies and terms;
 - (f) keep your account details updated and provide us with notice of any changes to its personal details, and any other matters material to our ability to provide the Services; and
 - (g) keep your cyber security, internet privacy and virus detection software up-to-date.

2.5 You must not:

- (a) use the Services in any way that could damage the reputation of us or the goodwill or the IP Rights associated with the Services;
 - (b) permit any third party to use the Services, without our prior written consent;
 - (c) exploit the Services, other than pursuant to the terms under which the Licence was granted to you;
 - (d) disassemble, decompile or reverse engineer the software or attempt to do so;
 - (e) modify or remove any copyright or proprietary notices pertaining to the software;
 - (f) disclose any passwords to any third party;
 - (g) enter, complete, modify any data entered by the end user without the written consent of the end user;
 - (h) either in concert with any person or alone, attempt to circumvent or otherwise coopt the Services provided by us, in relation the extent, type cost or methodology of services offered;
 - (i) divulge except in the ordinary course of business, the processes, costs strategic arrangements and relationships regarding the Services to any party without the express permission of us;
 - (j) directly or indirectly seek to construct or arrange similar services and technologies which may be consider as completing to those of ours, and/or our key partners;
 - (k) make any alteration to the Services, software, platform upon which the Services are provided or the code upon which it is based;
 - (l) use the Services in any way that causes, or may cause, damage to or impairment of the availability or accessibility of the Services or third party hosting services upon which the Services are hosted,.
- 5.9 use the Services in any way that uses excessive hosting resources and as a result is liable to cause a material degradation in the services provided to its other End Users using the Services; and you acknowledges that we may use reasonable technical measures to limit the use by you for the purpose of assuring services generally.

3 Unlawful Content

- 3.1 Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).
- 3.2 Content, and the use of Content by us in any manner licensed or otherwise authorised by you, must not:
- (a) be libellous or maliciously false;
 - (b) be obscene or indecent;
 - (c) infringe any copyright, moral right, database right, trade mark right, design right, right in passing off, or other Intellectual Property Rights;
 - (d) infringe any right of confidence, right of privacy or right under data protection legislation;
 - (e) constitute negligent advice or contain any negligent statement;

- (f) constitute an incitement to commit a crime, instructions for the commission of a crime or the promotion of criminal activity;
- (g) be in contempt of any court, or in breach of any court order;
- (h) constitute a breach of racial or religious hatred or discrimination legislation;
- (i) constitute a breach of any contractual obligation owed to any person;
- (j) constitute a breach of any relevant laws.

4 Graphic material

- 4.1 Content must be appropriate for all persons who have access to or are likely to access the Content in question, and in particular for children over 12 years of age.
- 4.2 Content must not depict violence in an explicit, graphic or gratuitous manner.
- 4.3 Content must not be pornographic or sexually explicit.

5 Factual accuracy

- 5.1 Content must not be untrue, false, inaccurate or misleading.
- 5.2 Statements of fact contained in Content and relating to persons (legal or natural) must be true; and statements of opinion contained in Content and relating to persons (legal or natural) must be reasonable, be honestly held and indicate the basis of the opinion.

6 Negligent advice

- 6.1 Content must not consist of or contain any advice, instructions or other information that may be acted upon and could, if acted upon, cause death, illness or personal injury, damage to property, or any other loss or damage.

7 Etiquette

- 7.1 Content must be appropriate, civil and tasteful, and accord with generally accepted standards of etiquette and behaviour on the internet.
- 7.2 Content must not be offensive, deceptive, threatening, abusive, harassing, menacing, hateful, discriminatory or inflammatory.
- 7.3 Content must not be liable to cause annoyance, inconvenience or needless anxiety.
- 7.4 You must not use the Services to send any hostile communication or any communication intended to insult, including such communications directed at a particular person or group of people.
- 7.5 You must not use the Services for the purpose of deliberately upsetting or offending others.
- 7.6 You must not unnecessarily flood the Services with material relating to a particular subject or subject area, whether alone or in conjunction with others.
- 7.7 You must ensure that Content is appropriately categorised.
- 7.8 You must at all times be courteous and polite to other users of the Services.

8 Marketing and spam

- 8.1 You must not without our written permission use the Services for any purpose relating to the marketing, advertising, promotion, sale or supply of any product, service or commercial offering.

- 8.2 Content must not constitute or contain spam, and you must not use the Services to store or transmit spam - which for these purposes shall include all unlawful marketing communications and unsolicited commercial communications.
- 8.3 You must not send any spam or other marketing communications to any person using any email address or other contact details made available through the Services or that you find using the Services.
- 8.4 You must not use the Services to promote, host or operate any chain letters, Ponzi schemes, pyramid schemes, matrix programs, multi-level marketing schemes, "get rich quick" schemes or similar letters, schemes or programs.
- 8.5 You must not use the Services in any way which is liable to result in the blacklisting of any of our IP addresses.

9 Regulated businesses

- 9. You must only use the Services for the purposes of running a lawful business or conducting lawful commercial activity, under the laws of Australia.

10 Monitoring

- 10.1 You acknowledge that we may actively monitor the Content and the use of the Service.

11 Data mining

- 11.1 You must not conduct any systematic or automated data scraping, data mining, data extraction or data harvesting, or other systematic or automated data collection activity, by means of or in relation to the Services.

12 Hyperlinks

- 12.1 You must not link to any material using or by means of the Services that would, if it were made available through the Services, breach the provisions of this Policy.

13 Harmful software

- 13.1 The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies.
- 13.2 The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.

Schedule 3 | End User Warranties

1 Due incorporation

If the End User is a Company, then the End User is a duly incorporated company validly existing under the laws of its jurisdiction of incorporation and has the power to own its assets and carry on its business as it is being conducted at the time the End User Agreement is executed and each and every time it accesses the Platform.

2 Powers

The End User has the power and authority to execute, deliver and perform its obligations under this agreement and the transactions contemplated by this agreement, and no limit on its powers will be exceeded as a result of the transactions contemplated by this agreement.

3 Authorisations

The End User has taken all necessary actions, and obtained all required consents, to enable it to execute, deliver and perform its obligations under this agreement, and any such authorisations are in full force and effect.

4 Non-contravention

The execution and performance of this agreement does not, and will not, contravene or conflict with:

- (a) the constitutional documents of the End User; or
- (b) to the best of the knowledge of the End User:
 - (i) any agreement binding on the End User or any of its assets, or constitute a default or termination event (howsoever described) under any such agreement; or
 - (ii) any law or regulation, or judicial or official order, that is applicable to the End User.

5 Binding obligations

The obligations of the End User under this agreement are legal, valid, binding and enforceable.

6 No duress

The entry into this agreement by the End User is not the result of any fraud, duress, coercion, pressure or undue influence exercised by or on behalf of any Risk Mitigators or any other person upon it, and it is entering into this agreement freely and voluntarily.

7 Insolvency Events

- 7.1 No Insolvency Event has occurred in respect of the End User or will be caused by the execution and/or performance of this agreement.
- 7.2 No material breach of this agreement has occurred in respect of the End User for the purposes of clause 1.1 or will be caused by the execution and/or performance of this agreement.

8 Referrals

- 8.1 Any delay in notification to Risk Mitigater of any matter that may affect the calculation of Commission, will result in the Commission that would have been due and payable had notification promptly been given, becoming due and payable from the date it would have been due and payable in the circumstances where notice was promptly given.
- 8.2 Risk Mitigaters may at any time on 30 days' notice require the End User to provide them with access to such financial and management records as Risk Mitigaters may require to determine the accuracy of the calculation in Income.

9 Agreement

The End User warrants that it, and its employees, agents and contractors will abide by the Terms and Conditions of the Relevant IP, and this Agreement.

10 Insurance

The End User warrants that it holds (or will obtain within 7 days of notification) sufficient insurance as may be required of it by Risk Mitigaters from time to time.

Schedule 4 | Definitions

- 1.22 **Business Day** means a day (other than a Saturday, Sunday or public holiday) when banks in Sydney, New South Wales are open for business.
- 1.23 **Change of Control** means, in respect of a particular entity, a person who Controls that entity ceasing to do so or another person acquiring Control of it.
- 1.24 **Control** has the meaning given in Section 50AA of the Corporations Act.
- 1.25 **Claim** means any claim, complaint, demand, proceeding, suit, litigation, action, cause of action or other legal recourse (whether in contract, tort, under statute or otherwise).
- 1.26 **Confidential Information** means all information provided by one party to the other in connection with this agreement, where such information is identified as confidential at the time of its disclosure or ought reasonably be considered confidential based on its content or nature or the manner of its disclosure, but excluding information that:
- (a) enters the public domain, or is disclosed to a party by a third party, other than through a breach of this agreement; or
 - (b) is developed independently by a party.
- 1.27 **Controller** has the meaning given in the Corporations Act.
- 1.28 **Copyright Act** means the *Copyright Act 1968* (Cth).
- 1.29 **Corporations Act** means the *Corporations Act 2001* (Cth).
- 1.30 **End User Data** means all data, works and materials, uploaded to or stored on the Relevant IP by the End User; transmitted by the Relevant IP at the instigation of the End User; supplied by the End User to Risk Mitigators for uploading to, transmission by or storage on the Relevant IP; or generated by the Relevant IP as a result of the use of the Relevant IP by the End User (but excluding analytics data relating to the use of the Relevant IP and server log files);
- 1.31 **Documentation** means all information (however recorded or preserved) relating to any Relevant IP (including manuals, notes, user guides, functional and technical drawings, specifications, data, reports, designs, modification manuals, flow charts and listings that are designed to assist or supplement the development, understanding or exploitation of the Relevant IP and, in respect of the software, includes all Source Code and Object Code.)
- 1.32 **Encumbrance** means any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, howsoever created or arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect.
- 1.33 **End User Warranties** means the representations and warranties set out in Schedule 3, which are made and given by the End User to Risk Mitigators.
- 1.34 **Force Majeure Event** means any:
- (a) Act of God, including flood, earthquake, windstorm or other natural disaster;
 - (b) outbreak or escalation of hostilities (whether or not war has been declared) or any other unlawful act against public order or authority;
 - (c) industrial dispute;

- (d) government restraint;
 - (e) unavailability, shortage, breakage or failure of essential equipment, communication channels, facilities, machinery or electricity supply (not caused by the relevant party);
 - (f) shut down, interruption to or corruption of the internet and/or servers (not caused by the relevant party); or
 - (g) other event that is not within reasonable control of the parties and which, by its nature, could not have been foreseen by the relevant party or, if it could have been foreseen, was unavoidable.
- 1.35 **Governmental Agency** means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.
- 1.36 **GST** has the same meaning given to that expression in the GST Law.
- 1.37 **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.
- 1.38 **GST Law** has the same meaning given to that expression in the GST Act.
- 1.39 **Insolvency Event** means, in respect of a particular person, the occurrence of any one or more of the following events in relation to that person:
- (a) for a person that is a body corporate:
 - (i) except for the purpose of a solvent reconstruction or amalgamation:
 - (ii) process is filed in a court seeking an order that it be wound up or that a Controller be appointed to it or any of its assets, unless the application is withdrawn, struck out or dismissed within 7 days of it being filed; or
 - (iii) an order is made that it be wound up or that a Controller be appointed to it or any of its assets; or
 - (iv) a resolution that it be wound up is passed or proposed;
 - (v) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertakings;
 - (vi) an administrator is appointed to it, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to it;
 - (vii) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
 - (viii) a reorganisation, moratorium, agreement of company arrangement or other administration involving one or more of its creditors is proposed or effected;
 - (ix) any action is taken by the Australian Securities and Investments Commission with a view to its deregistration or its dissolution, or an application is made to the Australian Securities and Investments Commission that any such action be taken;

- (x) it is insolvent within the meaning of section 95A of the Corporations Act, states that it is unable to pay its debts or it is presumed to be insolvent under any applicable law;
 - (xi) as a result of the operation of section 459F(1) of the Corporations Act, it is taken to have failed to comply with a statutory demand;
 - (xii) it stops or suspends or threatens to stop or suspend the payment of all or a class of its debts;
 - (xiii) any event or circumstance set out in section 461 of the Corporations Act occurs in relation to it; or
 - (xiv) anything having a substantially similar effect to any of the events specified in paragraphs (a)(i) to (a)(x) of this definition happens to it under the law of any jurisdiction; and
- (b) for a person that is a natural person:
- (i) a bankruptcy notice is issued against the person;
 - (ii) a receiver or a trustee for creditors or in bankruptcy is appointed to any of the person's property;
 - (iii) the person proposes or enters into an arrangement or composition with, or an assignment for the benefit of, any of the person's creditors;
 - (iv) the person proposes or effects a moratorium involving any of the person's creditors;
 - (v) the person stops or suspends, or threatens to stop or suspend, the payment of all or a class of its debts;
 - (vi) the person is unable to pay all of the person's debts as they fall due or is presumed to be insolvent under any applicable law;
 - (vii) the person becomes an "insolvent under administration" as defined in section 9 of the Corporations Act; or
 - (viii) anything having a substantially similar effect to any of the events specified in paragraphs (b)(i) to (b)(vii) of this definition happens to the person under the law of any jurisdiction.

1.40 **IP Ownership Claim** has the meaning given in in this Agreement

1.41 **IP Rights** means patents, rights to inventions, copyright and related rights, Moral Rights, trade marks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how, trade secrets and marketing secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

1.42 **Licence Fee** means the amount advised as payable by us in respect of a Licence from time to time.

1.43 **Losses** means any loss, damage, debt, cost, charge, expense, fine, outgoing, penalty, diminution in value, deficiency or other liability of any kind or character (including legal and

other professional fees and expenses on a full indemnity basis) that a party pays, suffers or incurs or is liable for, including all:

- (a) liabilities on account of Tax;
- (b) interest and other amounts payable to third parties;
- (c) legal and other professional fees and expenses (on a full indemnity basis) and other costs incurred in connection with investigating, defending or settling any Claim, whether or not resulting in any liability; and
- (d) all amounts paid in settlement of any Claim.

1.44 **Moral Rights** has the same meaning as that term has in Part IX of the Copyright Act.

1.45 **Object Code** means the executable version of a computer program.

1.46 **Relevant IP** means the RISC Platform and/or any other specified Software.

1.47 **RISC Platform** means the software accessible through the URL <https://www.riscsurveys.com.au/login.aspx> and as set out, described or referred to as follows:

A software platform that presents the end user with a series of questions that, when completed, assist the end user in answering them to obtain discounted insurance products.

Services and products that are analogous to the essence of risk mitigation and compliance to insurance and risk.

1.48 **Software** means the software specified in an Agreement and/or supplied to you.

1.49 **Source Code** means a computer program expressed in a source language or form that can be interpreted or compiled and then executed by a computer as commands, together with all documentation and tools reasonably required to enable a person having commercially available computer programming skills to read, understand and modify the computer program.

1.50 **Stamp Duty** means any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount in respect of the above.

1.51 **Tax Acts** means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

1.52 **Tax or Taxation** means:

- (a) any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called, levied, imposed or assessed under the Tax Acts or any other statute, ordinance or law by any Governmental Agency (including profits tax, property tax, interest tax, income tax, tax related to capital gains, tax related to the franking of dividends, bank account debits tax, fringe benefits tax, sales tax, payroll tax, superannuation guarantee charge, group or Pay as You Go withholding tax and land tax);
- (b) unless the context otherwise requires, Stamp Duty and GST; and
- (c) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above.

10.2 **You** means you in the ordinary sense of the word, being:

- (a) the user of this Website, Platform and/or Software, and/or

- (b) the individual, the company, business or party to an End-User Agreement, and/or Partnership Agreement or any other agreement with Risk Mitigators.