

RISKCOM TERMS AND CONDITIONS

1 Definitions

In these Terms and Conditions unless the context requires a different meaning, the following terms have the meanings indicated:

Agreement	means the agreement between Riskcom and the Client composed of the Proposal and these Terms and Conditions as set out in this document.
Riskcom	means Riskcom Pty Ltd or the Riskcom subsidiary providing the Services as set out in the Proposal.
Client	means the client identified in the Proposal.
Confidential Information	has the meaning given to that term in clause 4.2.
Deliverable	means any article, item or product developed for the Client by Riskcom and delivered under the Agreement.
Intellectual Property	means all intellectual and industrial property rights of whatever nature (whether or not registered or registrable) including, all technical information, know how, trade marks, service marks, business names, domain names, copyright, designs, patents, trade secrets, software, computer code, rights in circuit layouts, rights in databases.
Project IP	means Intellectual Property prepared or developed by either party (or its subcontractors) for or in connection with the Project or the Services but excluding pre-existing Riskcom IP and pre-existing Client IP (as those terms are defined in clause 5).
Proposal	means the written proposal provided by Riskcom to the Client, accompanied by or referencing these Terms and Conditions, as amended or updated by agreement from time to time, and including any Special Conditions or documents set out in the proposal or incorporated into it by reference.
Services	means the services to be delivered by Riskcom pursuant to this Agreement, as specified in the Proposal, and any services that are necessary or incidental to the performance of those services and the provision of any Deliverables.

2 Invoicing and payment

- 2.1 Fees are specified in the Proposal. Unless otherwise stated in the Proposal, all fees are exclusive of travel, and subsistence costs, and any disbursements relating to the Services. All disbursements will be charged at cost.
- 2.2 Invoices will be issued as outlined in the Proposal or if unspecified on a monthly basis.

2.3 Invoices must be paid by the Client within 14 days after the invoice date. If the Client disputes the correctness of any invoice issued by Riskcom (or disagrees with any amount invoiced for any reason), then the Client may withhold payment of the disputed sum (and the relevant invoice will be deemed to have been amended by Riskcom to reflect the undisputed amount) until any such dispute is resolved to the satisfaction of both the Client and Riskcom in accordance with clause 12.

2.4 If the Client fails to pay an invoice when it is due, Riskcom may charge interest, in its discretion, at a rate equivalent to one percent (1%) per month and the Client will pay such interest on demand. Each invoice will be sufficient evidence of the details therein including the amount owed to Riskcom.

3 Client information

- 3.1 The Client will promptly furnish to Riskcom all such information, including data and drawings relating to the Client's business and to the Services, as is reasonably required by Riskcom to enable Riskcom to provide its Services. Where required the Client will ensure that Riskcom and any consultants engaged in the provision of the Services will have access to its premises on reasonable notice for the purpose of ascertaining all matters that may reasonably be considered by Riskcom to be relevant to the Services.
- 3.2 The Client will not be obliged to disclose information that is not reasonably relevant to the Services.
- 3.3 The Client acknowledges that if the Client fails to comply with its obligations under this clause that failure may cause or contribute to an increase in the cost of Riskcom delivering the Services to the Client, in which case the parties will meet in good faith to discuss any necessary adjustments to the fees to reflect any such additional cost.

4 Confidentiality

- 4.1 Riskcom and the Client will take all reasonable steps to preserve the confidentiality of each other's Confidential Information, such steps being no less than the measures the party would ordinarily take to protect the confidentiality of its own information of a similar kind. A party may only make use of the other party's Confidential Information for the purpose of and to the extent necessary to enable them to perform their respective obligations or exercise their rights under this Agreement.
- 4.2 In this clause, "**Confidential Information**" means information disclosed by one party (**Disclosing Party**) to the other (**Receiving Party**) which is designated by the disclosing party as confidential or which the Receiving Party knows or ought reasonably to know is confidential, and includes the terms of the Agreement and materials comprising each party's Intellectual Property. A Receiving Party will immediately advise the Disclosing Party of any disclosure, loss, or use of Confidential Information in violation of this Agreement. The confidentiality obligations will survive the term of this Agreement for a period of seven (7) years thereafter.
- 4.3 Nothing in this clause imposes an obligation on a Receiving Party not to disclose or use information already known to the receiving party prior to its disclosure by the

disclosing party, or lawfully received by the receiving party from a third party, or independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information, or information published at the date of such disclosure, or information which is in or enters the public domain through no fault of the Receiving Party.

4.4 A party will not be in breach of clause 4.1 if it discloses Confidential Information under compulsion of law or to its legal advisers, auditors, or financial advisers, to the extent that is reasonably necessary to do so.

4.5 Within thirty (30) days following any expiration or termination of this Agreement, each party will return any and all materials owned by the other party, including any Confidential Information provided during the term of this Agreement and any copies thereof. A Recipient may retain a copy of Confidential Information if required for preservation of records, and Confidential Information that is stored on routine back-up media solely for the purpose of disaster recovery will be subject to destruction in due course, and the confidentiality and limited use obligations of this Agreement will continue to apply to such Confidential Information.

5 Privacy

5.1 Each party must comply with any obligations it may have under the *Privacy Act 1988* (Cth) and any other relevant laws relating to the collection, storage and use of personal information in carrying out its obligations under this Agreement.

5.2 In providing any personal information to Riskcom the Client warrants that it has obtained any consent from the subject of such personal information that may be necessary for its use and disclosure for purposes relating to the supply of the Service to the Client.

6 Intellectual property rights

6.1 The Client will retain ownership of any pre-existing Intellectual Property in materials and information provided by the Client to Riskcom for use by Riskcom for the purposes of undertaking the Services (**Client IP**). Client grants Riskcom a term-limited, royalty-free, right and license under the Client IP solely to perform the Services during the term of this Agreement. The license granted to Riskcom under this clause 6.1 may only be sub-licensed to approved subcontractors of Riskcom, and only to the extent required to perform the subcontracted part of the Services.

6.2 Riskcom will retain ownership of any pre-existing Intellectual Property in materials, information, tools, software and methodologies provided by Riskcom for the purposes of undertaking the Services, together with any modifications and improvements thereto, but excluding Client IP (**Riskcom IP**).

6.3 Riskcom hereby grants to the Client a non-exclusive, transferable, sub-licensable, fully paid-up, perpetual and irrevocable, worldwide license in respect of such of the Riskcom IP as may be comprised in any Deliverable, to use, reproduce, distribute, modify and improve the Deliverable solely to the extent require for the Client to enjoy the full benefit of the Agreement and the rights granted under it.

6.4 All work product under the Services will be original work product of Riskcom and neither such work product nor the embodied Riskcom IP will, to the knowledge of Riskcom, infringe any copyright or misappropriate or otherwise infringe the Intellectual Property of any third party.

7 Indemnity

7.1 The Client indemnifies Riskcom against any Loss arising from any claims of infringement of any Intellectual Property or misuse of a third party's confidential information brought against Riskcom as a result of Riskcom's provision of the Services in relation to the Services, to the extent that such claims arise from the use of any materials or information provided to Riskcom by the Client.

7.2 Each party hereby indemnifies the other party and its directors, officers and employees, from and against any Loss suffered or incurred by them arising from or in connection a third-party claim in relation to:

- (a) bodily injury or death of any person; or
- (b) damage to property,

resulting from the negligence of the indemnifying party or any of its directors, officers, employees, subcontractors or agents.

7.3 A party's liability to indemnify the other party under this clause 7 is reduced to the extent that such Loss arises from the negligent or wrongful acts or omissions of the indemnified party.

7.4 In this clause 7, '**Loss**' means any costs, expenses (including legal costs), losses, damages, charges, compensation, amounts paid on advice of legal advisers to compromise or settle a claim, taxes, outgoings or other payments.

8 Liability restricted

8.1 To the extent permitted by law, without limiting the Client's obligation to pay fees under this Agreement, each party's total aggregate liability under or in any way related to this Agreement (including, without limitation, liability for its negligence or that of its employees, servants or agents) or which arises directly or indirectly from the use of a Deliverable or recommendation arising out of the Services, however arising, is limited to the aggregate sum total of fees paid or payable to Riskcom by the Client under this Agreement.

8.2 To the extent permitted by law, neither party will be liable to the other for any indirect or consequential damages however arising (including, without limitation, in the circumstances set out in clause 8.1). For the purposes of this clause, 'consequential damage' will include, but not be limited to, loss of profit or goodwill or similar financial loss, any payment made or due to any third party and any loss or damage caused by delay in the supply of the Services.

8.3 No limitation or exclusion of liability under this Agreement applies in relation to an express obligation of one party to indemnify the other party under this Agreement.

9 Software provisions

9.1 This clause 9 and clause 10 apply where the Services include Riskcom delivering any software related services to the Client, including the provision 'Software as a

Service' and access to any third-party software (collectively, '**Riskcom Applications**').

to correct, repair or replace (at Riskcom 's election) the defective component of the Services.

9.2 Riskcom grants to the Client a non-exclusive, non-sub licensable, revocable, non-transferable licence (except as expressly permitted under this Agreement), for the permitted use of the Riskcom Applications during the term of this Agreement, solely for the Client's internal business purposes;

9.3 The Client will ensure that its personnel, and any other Client authorised users of the Riskcom Applications (**Users**), comply with the licensing terms and permitted use as set out in this Agreement.

9.4 Issuing of User Licences

- (a) Riskcom will provide the Client with the number and type of User licences and access to the Riskcom Applications purchased or subscribed for under the Agreement.
- (b) The Client acknowledges that User access is granted per designated User and an individual licence cannot be shared or used by more than one User unless stated otherwise in the Proposal. A User may be reassigned to a new User who is replacing a former User who no longer requires ongoing access to Riskcom Applications.
- (c) The Client is responsible for granting Users access to the Riskcom Applications. The Client must not grant access in excess of the number of User licences purchased from Riskcom.

9.5 Riskcom warranty

- (a) Riskcom warrants that:
 - (i) it has the authority to grant the rights granted to the Client under this Agreement;
 - (ii) the Riskcom Applications shall perform materially in accordance with the functionality outlined in the Proposal and will not materially decrease during the term;
 - (iii) the use of the Riskcom Applications by the Client in accordance with this Agreement will not infringe the Intellectual Property rights of any person, or impose any obligation on the Client to pay any royalty.
- (b) Riskcom is not liable under clause 9.5(a)(iii) to the extent that any infringement or defect is caused, or contributed to, by (without limitation):
 - (i) Client input of Client Data, modification to the Riskcom Applications or any output therefrom by the Client that is not authorised by this Agreement; or
 - (ii) use of the Riskcom Applications or any third party Intellectual Property in a manner that is not in accordance with this Agreement.
- (c) Without limiting the generality of the foregoing, Riskcom does not represent or warrant that the Client's use of the Riskcom Applications will meet the Client's requirements or will be uninterrupted, timely secure or free from error.
- (d) The Client's sole remedy for Riskcom 's breach of clause 9.5(a) is for Riskcom, at Riskcom 's expense,

10 CLIENT DATA

10.1 In this clause **Client Data** means all electronic data or information submitted by, uploaded or supplied by the Client for use with the Riskcom Applications, including personal information and Confidential Information.

10.2 The Client will have sole responsibility for the accuracy, quality, integrity, legality, reliability, handling and appropriateness of all content and data including Client Data submitted to, published via or stored on the Riskcom Applications by the Client or by Users.

10.3 Client's Intellectual Property

- (a) Riskcom acknowledges and agrees that nothing in this Agreement transfers or gives Riskcom any ownership or other rights in respect of any Client Data except as expressly set out herein.
- (b) The Client grants Riskcom a non-exclusive licence to the Client Data solely for the purpose of performing its obligations under this Agreement. Any Client Data that the Client Users provide to Riskcom is and will remain the property of the Client.

10.4 Return of Client Data

- (a) At the end the Agreement Riskcom will provide a copy of the Client Data on Riskcom's system or make it available for the Client to download, in an industry standard format, for 30 days following the end of the Agreement.
- (b) After 30 days following the end the Agreement Riskcom will delete or destroy all Client Data on its systems, or where Client Data is serviced in a multi-tenanted environment, or it is otherwise impractical to erase the Client Data, Riskcom will ensure the security of the Client Data until it can be irretrievably deleted or destroyed.

11 Termination

11.1 Either party may terminate this Agreement immediately by notice to the other party if the other party is in material breach of its obligations under this Agreement and:

- (a) the breach is incapable of being remedied; or
- (b) the breach is capable of being remedied and the party in breach fails to remedy it within 30 days (or such other period as the parties may agree) after having been given notice of the breach specifying what needs to be done to remedy it.

11.2 Either party may terminate this Agreement immediately by notice to the other party if the other party becomes insolvent or goes into liquidation, receivership, voluntary or other administration or some similar legal process.

11.3 If the Agreement is terminated either under this clause or otherwise, the Client must immediately pay all moneys due or payable in relation to work done by Riskcom under the Agreement prior to the termination date.

11.4 Without limiting the above, except as otherwise agreed, where the Client terminates this Agreement other than for Riskcom's default in accordance with clause 11.1, the Client must also pay or reimburse to Riskcom any

uncancellable commitments reasonably incurred by Riskcom in connection with the supply of Services prior to such termination.

- 11.5 Any clauses in the Agreement that are on their face intended to have operation beyond the end of the Agreement will continue after its end. Without limiting before going, clauses 2, 4, 5, 7, 8, 12, 17.1, 17.7 and 17.9 will survive any termination of the Agreement.

12 Dispute resolution

- 12.1 If a dispute arises between the parties in connection with this Agreement then the parties must use all reasonable endeavours acting in good faith to settle the dispute as soon as practicable.
- 12.2 A party must not commence court proceedings in relation to a dispute arising in connection with this Agreement until it has exhausted the procedures in this clause 12. Nothing in this clause 12 prevents a party from seeking urgent interlocutory relief from a court of competent jurisdiction.
- 12.3 If the Parties are unable in good faith to settle the dispute within 45 Business Days after the dispute arose, then either party may submit the matter to arbitration under clause 12.4.

12.4 Arbitration

- (a) If any dispute arises under, or in connection with, this Agreement, or its validity or termination and/or in connection with any breach or alleged breach of this Agreement, and such matter is not resolved pursuant to clause 12.1 or by other agreement of the parties, such matter will be finally resolved through binding arbitration as set forth in this clause 12.4. Either party may initiate arbitration of a dispute, and the party initiating arbitration must give to the other party notice specifying the dispute and requiring its resolution under this clause 12.4. Each such dispute is by this clause 12.4 referred to binding arbitration for final resolution.
- (b) Any dispute, controversy or claim arising out of, relating to or in connection with this Agreement, including any questions regarding its existence, validity or termination, will be referred to and finally resolved by arbitration administered by the Australian Disputes Centre (ADC).
- (c) Unless otherwise agreed, the arbitration will be conducted in Melbourne in accordance with the ADC Rules for Domestic Arbitration operating at the time the dispute is referred to ADC (the Rules). The terms of the Rules are hereby deemed incorporated into this Agreement. The arbitration will not require a party to provide 'discovery' (or like production) of documents.
- 12.5 This clause 12 applies even where this Agreement is otherwise void or voidable.

13 Representations and warranties

13.1 Client authority

Any person who purports to enter into the Agreement on behalf of the Client hereby warrants that for all purposes of the Agreement he or she is the duly authorised agent of the Client.

13.2 Riskcom warranty

Riskcom warrants it will perform the Services under this Agreement:

- (a) in accordance with the provisions of this Agreement;
- (b) with due care and skill and in a professional, competent and diligent manner, in accordance with appropriate industry standard and best practice; and
- (c) in compliance with all applicable laws.

13.3 Exclusion of implied warranties

- (a) To the extent permitted by law, each party excludes all warranties and conditions that might otherwise be implied by law into this Agreement. This clause does not limit or exclude the application of any provision of any statute (including the *Competition and Consumer Act 2010* (Cth) or any similar law) where to do so would contravene that statute or cause any part of this clause to be void. If any implied warranties and conditions cannot be excluded, to the extent permitted by law, Riskcom limits its liability under or in relation to any such warranty or condition to (at Riskcom's discretion) either:
- (i) in the case of services; supplying the services again or paying the cost of having the services supplied again; or
- (ii) in the case of goods; replacing the goods, supplying equivalent goods, paying the cost of replacing the goods or paying the cost of acquiring equivalent goods.
- (b) Except as expressly set out in this Agreement or the Proposal, makes no warranties or representations and the Client acknowledges that it has not relied on any pre-contractual representations in entering into this Agreement.

14 Site safety

Riskcom will comply, and will ensure that its staff comply, with:

- (a) any safety procedures made known to it by the Client; and
- (b) all reasonable directions of the Client's personnel, with respect to workplace safety while on the Client's premises.

15 Publicity

On approval from the Client, which approval will not be unreasonably withheld, Riskcom will be entitled to use in publicity material, the identity of the client and references to the Services, provided that the use of such references do not breach Riskcom's confidentiality obligations under clause 4.

16 Anti-bribery and corruption

- 16.1 Riskcom will not pay or give anything of value either directly or indirectly to an official of any government for the purpose of influencing an act or decision of any person in his or her official capacity, or inducing him or her to use their influence with the government or for the purpose of

influencing any act or decision in their capacity as a public official.

16.2 The Client shall not request any service or action by Riskcom which would or might constitute a request to influence any government official or that would or might constitute a violation of the laws in respect of corrupt practices in any applicable jurisdiction.

17 General

17.1 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) a reference to:
 - (i) a **clause** or a **Schedule** is to a clause in or a schedule to this Agreement;
 - (ii) a **person** includes a body corporate, an association of persons (whether corporate or not), a trust, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal personality;
 - (iii) **including** and similar words do not imply any limitation to the words adjacent to them;
 - (iv) a statute includes references to that statute as amended or replaced from time to time;
 - (v) a party is a reference to a party to this Agreement, and includes that party's successors and permitted assigns;
 - (vi) any gender includes all others, and the singular includes the plural and vice versa; and
 - (vii) \$ or dollars are to Australian dollars (AUD) currency;
- (b) the headings and any 'notes' in this Agreement are for convenience only and have no legal effect.

17.2 Law and jurisdiction

This Agreement is subject to the laws of the State of Victoria, Australia, without regard to its choice of law provisions. Each party irrevocably consents to the personal jurisdiction of the courts located in Melbourne, Australia for any suit or action arising from or related to this Agreement, and waives any right to object to the venue of such courts unless an alternative jurisdiction is mutually agreed by both parties.

17.3 No assignment

Riskcom will perform the Services for the Client only and prior to completion or termination of the Services the Client may not assign any of its rights arising under the Agreement, or the benefit of any licence granted to it by Riskcom, to any other entity without Riskcom's prior written consent.

17.4 Notices

A notice to be given by either Riskcom or the Client to the other must be in writing and delivered by hand or by post

(postage prepaid) or sent by email to that party's address as shown in the Proposal.

17.5 Force majeure

A party's obligations under this Agreement will be suspended during the time that party is prevented from fully complying with such obligations by causes beyond its reasonable control and, with respect to Riskcom, any dates specified for Riskcom's provision of any Deliverables will be extended for the period of such suspension.

17.6 Client delay

If the Client is obliged to do or provide anything under this Agreement and fails or delays in performing that obligation, Riskcom will not be liable for any delay or failure in performance of its obligations to the extent that such failure or delay is attributable to the Client, and the time for Riskcom to perform its obligations will be extended by the period of any relevant Client delay.

17.7 No solicitation

Neither the Client nor any firm or company associated with or related to the Client (including but not limited to any 'related entity', as that term is defined in the *Corporations Act 2001*) will solicit or offer to employ any member of Riskcom's professional staff during the term and for a period of twenty-four (24) months following expiry or termination of the Agreement. The Client's liability to Riskcom for any breach of this provision will be an amount equivalent to one year's gross salary for the individual concerned, which will be a debt due and payable on demand to Riskcom, this amount being a genuine pre-estimate of Riskcom's loss in this event.

17.8 Severance

If for any reason any provision of this Agreement would render the Agreement ineffective, void, voidable, illegal or unenforceable, that provision or the relevant part thereof will, without in any way affecting the validity of the remainder of the Agreement, be severable and the Agreement will be read and construed and take effect for all purposes as if that provision or part were not contained herein.

17.9 Entire agreement and variations

- (a) These Terms and Conditions and the Proposal constitute the entire agreement between Riskcom and the Client.
- (b) Any variation of the Proposal, these Terms and Conditions or this Agreement will only be effective if it is in writing signed by Riskcom and the Client.
- (c) If there is any conflict between these Terms and Conditions and any conditions contained in the Proposal, these Terms and Conditions will override those conditions to the extent of the inconsistency unless an inconsistent condition in the Proposal expressly states that it is a Special Condition and takes precedence over or operates notwithstanding these Terms and Conditions.