

Terms of Use

AutoRFP.ai

Background

- A. AutoRFP.ai is the owner and developer of the Software, an online software platform accessibly which automates requests for proposal (**RFPs**) with leading artificial intelligence (**AI**) and user experience (**UX**) technologies.
- B. You seek a licence to access and use the Software to assist in your RFPs, Security Questionnaires or other Projects.
- C. AutoRFP.ai may also provide: certain Services or customisations to the Software for Your specific business requirements; or further improvements to the Software via research and development conducted during the term of the Agreement.
- D. The Agreement sets out the terms and conditions agreed between the parties for Your access to and use of the Software and Services.

1. Formation and precedence

1.1 Formation and composition

The following are comprised in the Agreement:

- (a) the applicable Order Form;
- (b) the provisions of these Terms of Use, as amended under clause 14.11(a) from time to time; and
- (c) any other document forming part of the Agreement as agreed to in writing by the parties,

together the "**Agreement**".

1.2 Precedence for the Agreement

In the event of any conflict or inconsistency between one or more of the documents, for interpretation, the following will be the order of precedence (highest to lowest):

- (a) the Special Conditions set out in the applicable Order Form;
- (b) any other provisions in the applicable Order Form;
- (c) these Terms of Use as incorporated under clause 1.1; and
- (d) any other document forming part of the Agreement as agreed to in writing by the parties.

1.3 No additional provisions

Any additional terms and conditions promulgated by a party will not form part of the Agreement and will have no force or effect unless accepted expressly in writing by the other party.

2. Term

2.1 Initial Term

The initial term of the Agreement:

- (a) commences on the Commencement Date;

- (b) subject to a further rollover term under clause 2.2 (**Rollover**), continues until the Expiry Date, unless otherwise terminated earlier in accordance with the Agreement (**Initial Term**).

2.2 Rollover

Unless:

- (a) You have selected "No Automatic Rollover" in the applicable Order Form; or
- (b) one of the parties provides written notice to the other party of an intention to allow the Term to expire 30 days prior to the expiry of the Initial Term or any Further Term under this clause 2.2 (**Rollover**) (**Expiry Notice**); or
- (c) the Agreement has been otherwise terminated earlier in accordance with clause 11 (Termination) of the Agreement,

the Agreement will automatically and continuously renew for further periods equal to the Initial Term (**Further Term**) on the terms and conditions of the Agreement.

3. Grant of Licence

3.1 Grant of Licence

Subject to clause 3.2, AutoRFP.ai grants to You a non-exclusive, revocable, non-transferable licence to:

- (a) access and use the Software; and
- (b) use any Intellectual Property Rights in Materials deliberately provided by AutoRFP.ai under the Agreement to You,

for your internal business purposes only, in accordance with the terms of the Agreement, for the Term (**Licence**).

3.2 Restrictions and special acknowledgments

You agree the Licence is subject to the following restrictions:

- (a) the Licence expressly excludes a right of sub-licence in respect of the Software;
- (b) You must not develop, use or make available the Software or any Documentation to any other third party, without AutoRFP.ai's prior written agreement; and
- (c) AutoRFP.ai's ownership of the Intellectual Property Rights in the Software and the Documentation is not altered by the Agreement and remains the sole property of AutoRFP.ai.

3.3 Authorised use

- (a) You must take reasonable steps to ensure Your and Your End Users' use of the Software is strictly in accordance with the terms of the Agreement.
- (b) You are responsible for ensuring all Login Credentials are kept secure and confidential according to Your internal security protocols.
- (c) You must promptly notify AutoRFP.ai of any unauthorised use or disclosure of Your or Your End

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Users' Login Credentials, or any actual or potential breaches of security which may affect You or Your End Users, Your access to Software, or Your End Users' access to Software, and AutoRFP.ai will reset or replace (as the case may be) the relevant Login Credentials or take such other action as AutoRFP.ai deems appropriate.

- (d) You acknowledge and agree that:
- (1) You determine who is an End User and what level of access (if applicable), that End User has to the Software. Information about user roles and access levels are available in the Software;
 - (2) You are responsible for all End Users' use of the Software; and
 - (3) You control each End User's level of access to the Software at all times and can revoke or change an End User's access, or level of access, at any time for any reason, in which case that person or entity will cease to be an End User or will have that different level of access, as the case may be.

3.4 Limited Licence

You acknowledge and agree that the rights granted to You under the Licence are expressly limited to the rights stated in clause 3.1. To the fullest extent permitted by Law, all implied rights in relation to the Licence are excluded.

4. Availability

4.1 Availability

AutoRFP.ai will use its reasonable endeavours to provide You with access to the Software on a continuous basis at least 99.5% of the time during the Term (unless the parties expressly agree otherwise in writing), with the exception of unavailability caused by events described in clauses 4.2 and 4.3.

4.2 Suspension

- (a) AutoRFP.ai may, with prior notice to You, temporarily suspend (in part or in whole) Your access to the Software if:
- (1) there is a malfunction, fault or breakdown of any of AutoRFP.ai's systems or if AutoRFP.ai is required to undertake the repair, maintenance or service of any part of the Software;
 - (2) AutoRFP.ai is required by Law to do so;
 - (3) an event of Exceptional Circumstance occurs, which affects or may affect AutoRFP.ai's ability to provide the Software;
 - (4) if there is a Claim made that you have infringed the rights of any person in connection with your use of the Software;
 - (5) if there is a Claim made that exposes AutoRFP.ai to Liability or prosecution for

an offence or Liability to a statutory prosecution arising from Your conduct or the conduct of Your Users; or

- (6) if AutoRFP.ai determines that You are in breach of the Agreement including where AutoRFP.ai determines that You have failed to meet Your obligations under clauses 5.3 or 5.4.

- (b) Suspension in accordance with clause 4.2(a) will not affect any right which accrue prior to, or after, suspension of AutoRFP.ai's obligations under the Agreement.

4.3 Downtime and limitations

You acknowledge and agree that:

- (a) access to the Software may occasionally be limited due to Scheduled Maintenance;
- (b) access to the Software is reliant upon various factors outside the control of AutoRFP.ai, including, without limitation, events of Exceptional Circumstance, the outage of any third party provider's software or infrastructure upon which AutoRFP.ai's Software is reliant, Your internet service provider, telecommunications provider or equipment used to access the Software. While AutoRFP.ai will use all reasonable endeavours to ensure You have continuous access to the Software in accordance with clause 4.1, AutoRFP.ai will not be Liable to You or any other person for any Claim or to any other extent for Loss or damage caused by such factors; and
- (c) AutoRFP.ai's ability and obligation to provide access to the Software is subject to You complying with Your obligations under clauses 5.3 and 5.4 and any other limitation or exclusion set out in the Agreement.

4.4 Notice

In the event that access to the Software is suspended in accordance with clause 4.2, AutoRFP.ai will endeavour to provide You with prior written notice where it is reasonable and practicable to do so in AutoRFP.ai's opinion.

5. Obligations

5.1 AutoRFP.ai obligations

- (a) AutoRFP.ai will take reasonable steps to provide the Services to You in respect of You and Your End Users' use of the Software during the Term.
- (b) During the Term, AutoRFP.ai will procure and maintain with a reputable insurer the Required Insurances.

5.2 Subcontracting

- (a) You acknowledge and agree that AutoRFP.ai may delegate the performance of any of its obligations under the Agreement to any of its subcontractors, at its discretion, which may change from time to time.

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- (b) Any subcontracting arrangement must impose obligations on the subcontractor equivalent to the obligations in the Agreement.
- (c) AutoRFP.ai agrees that, regardless of any subcontracting arrangement, AutoRFP.ai remains Liable for all acts and omissions of any subcontractors.

5.3 Mutual obligations and warranties

- (a) Each party warrants to the other that it:
 - (1) will perform its duties under the Agreement with care, skill and diligence, and in accordance with all applicable Laws; and
 - (2) has full power and authority to enter into the Agreement.
- (b) Each party must promptly notify the other party of any:
 - (1) unauthorised use of the other party's Intellectual Property Rights;
 - (2) interruptions to use of the Software (whether in part or as a whole) or of any errors or other problems experienced by End Users when using the Software;
 - (3) event or incident that is likely to or will impact on access and use of the Software, the provision of the Services or any other obligation of AutoRFP.ai; and
 - (4) unauthorised access or use of the Software, Service or Your or Your End Users' Login Credentials.

5.4 Your obligations and warranties

- (a) You must (and you must take reasonable steps to ensure that Your Personnel and End Users):
 - (1) upload to the Software only data or information that is requested by, required for, or specifically relevant to, the Software;
 - (2) not upload or enter any data or information other than that described in clause 5.4(a)(1); and
 - (3) amend and update Personal Information contained within, or provided in relation to, the Software, where it is incomplete, inaccurate or out of date.
- (b) You warrant to AutoRFP.ai that:
 - (1) all Login Credentials and Personal Information You provide to AutoRFP.ai whether directly or through the Software is current, true, accurate and complete; and
 - (2) You have all necessary ownership or licence rights, consents or approvals to upload Your Data to the Software, and to grant the rights under clause 5.5.

5.5 AutoRFP.ai's warranty

AutoRFP.ai warrants to You that:

- (a) to the best of its knowledge at the time of entering the Agreement the Software and Services will not infringe the Intellectual Property Rights of any third party;
- (b) it has the full right and title to enter into the Agreement and to grant the rights it sets out to You; and
- (c) the Software and Services will be performed with due care, diligence and skill.

5.6 Limitation of liability for warranty

- (a) Notwithstanding clause 12.4(a), to the extent a court of law has determined AutoRFP.ai is in breach of its warranty in clause 5.5(a) of the Agreement, Your remedy for this breach is limited (at the option of AutoRFP.ai) to AutoRFP.ai:
 - (1) providing functionally equivalent non-infringing Software or Services to You;
 - (2) obtaining a licence for Your benefit from the relevant third party for You to continue using the Software or Services; or
 - (3) reimbursing You (subject to clause 12.4(b)) for the Fees.

6. Intellectual Property Rights and data

6.1 AutoRFP.ai Background IP

- (a) No rights of ownership to AutoRFP.ai Background IP are transferred under the Agreement, and all such rights remain with AutoRFP.ai.
- (b) AutoRFP.ai grants to You a perpetual, non-exclusive, transferrable, sub-licensable, irrevocable, royalty-free licence (subject to clause 7) to use the Intellectual Property Rights in AutoRFP.ai Background IP comprised in the Outputs or any other Materials provided by AutoRFP.ai to You.

6.2 Your Background IP and Your Data

- (a) No rights of ownership to Your Background IP, Your Data, or End User Data are transferred under the Agreement, and all such rights remain with You.
- (b) You grant to AutoRFP.ai a non-exclusive, non-transferable, royalty free licence to use Your Background IP and Materials provided to AutoRFP.ai for the purposes of the Licence and performing obligations under the Agreement, for the Term.
- (c) You grant to AutoRFP.ai a non-exclusive, non-transferable, worldwide, royalty free licence to use, copy, transmit, store, analyse and back-up Your Data for the purposes of:

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- (1) performing AutoRFP.ai's obligations under the Agreement; and
- (2) generating aggregated and de-identified data that may be used for the purposes of protecting, improving and developing the Software and Services (except that AutoRFP.ai will not use Your Data for training of artificial intelligence models).

6.3 Provision and ownership of New IP

- (a) You acknowledge that AutoRFP.ai creates regular updates and enhancements to its Software, in which new Intellectual Property Rights may subsist.
- (b) Upon creation, all New IP will be owned by, and assigned to, AutoRFP.ai.

6.4 Prohibited activities

Unless otherwise expressly authorised in writing by AutoRFP.ai, You will not (and must not permit or procure Your Personnel and End Users to):

- (a) reverse engineer, reverse assemble, disassemble or decompile the AutoRFP.ai Background IP or Software;
- (b) reproduce, or otherwise modify or adapt the Software to create any derivative works based on the AutoRFP.ai Background IP or Software;
- (c) use, or permit, the AutoRFP.ai Background IP or Software to be accessed or used in any way other than in a manner expressly permitted by the Agreement;
- (d) attempt to gain unauthorised access to any Materials or data, other than those which You have been given express permission to access on the computer system which the Software is hosted;
- (e) use the AutoRFP.ai Background IP or Software in a manner contrary to that permitted or authorised by Law;
- (f) permit the Software to be accessed in any unauthorised way, including via interfaces (including exposing or "passing through" a software application programming interface (API) or otherwise making the Software accessible as an API);
- (g) do or permit any act that uses the AutoRFP.ai Background IP or Software in a manner contrary to applicable Laws, or in a way that could infringe a third party's Intellectual Property Rights; or
- (h) use the AutoRFP.ai Background IP or Software in any way that could damage the reputation of AutoRFP.ai.

7. Payment

7.1 Payment of Fees

- (a) AutoRFP.ai will issue You with a Tax Invoice for the Fees payable under the Agreement.

- (b) You agree to pay AutoRFP.ai the Fees or any other amounts owing under the Agreement to AutoRFP.ai within 30 days from the date of AutoRFP.ai's Tax Invoice, or such other period as specified on the Tax Invoice.

7.2 Late or non-payment of invoices

If You fail to pay the Fees by the due date specified in clause 7.1(b), AutoRFP.ai may charge interest on the unpaid amount owing, at the rate of 1% and compounds daily from the due date until the date the outstanding amount is paid.

7.3 Fee increases

AutoRFP.ai may annually increase Fees or any other amounts payable under the Agreement with 14 days' notice. In the event You decide to terminate this Agreement as a result of a price increase under this clause 7.3, You may terminate within the 14 days after the price increase announcement, by providing AutoRFP.ai with 30 days written notice (in which case the termination will take effect on the expiry of the Initial Term or then-current Further Term).

7.4 Payment disputes

If there is bona fide dispute about whether a Fee or other amount contemplated by the Agreement is payable or available:

- (a) You must notify AutoRFP.ai within 14 days from the date of receipt of the Tax Invoice of the details and nature of the dispute;
- (b) You must pay AutoRFP.ai the portion of the invoiced amounts not in dispute;
- (c) the parties must continue to perform their obligations under the Agreement; and
- (d) appropriate Personnel from both parties with authority to resolve the dispute must meet within 14 days of the date of Your notice and make a bona fide attempt to settle the disputed amount, failing which the dispute will be referred to the dispute resolution process set out in clause 13.

8. GST

8.1 GST exclusive amounts

Unless expressly stated to the contrary all amounts expressed in the Agreement are exclusive of GST.

8.2 Taxable supplies

If a Supplier is obliged under the GST Law to pay an amount of GST for a taxable supply made by the Supplier to a Recipient under the Agreement, the Recipient must pay the Supplier an amount equal to the GST payable on the supply by the Supplier.

8.3 Time for payment

The Recipient must pay the amount referred to in clause 8.2 and any interest, penalty, fine or expense relating to the GST, in addition to and at the same time as the consideration otherwise payable by the Recipient for the supply.

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8.4 Tax Invoice

If requested by the Recipient, the Supplier must provide the Recipient with a Tax Invoice on or before payment of the amounts required by this clause 8.

8.5 Adjustment events

If an adjustment event arises for a taxable supply under clause 8.2, the amounts required to be paid must be recalculated (**Recalculated Amount**) and the Recipient must pay the Supplier the Recalculated Amount.

8.6 Reimbursements

Where a party is required to pay for or reimburse an expense or outgoing of another party, the amount required to be paid or reimbursed is the amount of the expense or outgoing less any input tax credits to which the other party, or the representative member of a GST group to which they belong, is entitled.

8.7 Interpretation

Words which have a defined meaning in the GST Law have the same meaning in the Agreement unless the context otherwise requires.

9. Confidential Information

9.1 Disclosure

- (a) A party must not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- (b) Each party must take reasonable steps to ensure that its Personnel do not make public or disclose the other party's Confidential Information.
- (c) A party is not in breach of this clause 9.1 in circumstances where it is legally compelled to disclose the other party's Confidential Information.
- (d) Notwithstanding any other provision of this clause 9.1, the parties may disclose the terms of the Agreement (other than Confidential Information of a technical nature) to their respective Personnel.

9.2 Return of Confidential Information

Each party must on demand, and on termination or expiry of the Agreement, return to the other party or destroy any Confidential Information supplied by the other party in connection with the Agreement.

9.3 Publicity

- (a) You agree AutoRFP.ai may promote Your use of the Software:
 - (1) on AutoRFP.ai's website, responses to requests for proposals and external presentations for the purposes of promoting the Software; and
 - (2) in case studies and press releases, where Your prior permission is obtained.
- (b) This clause 9.3 survives termination or expiry of the Agreement for a period of one year.

9.4 Non-disparagement

Each party (including its Personnel) must not disparage the other party (including the other party's Personnel) or make any statement or publication, whether oral or in writing, directly or indirectly which does, or is likely to bring the other party (including the other party's Personnel) into disrepute, ridicule or adversely affect their commercial interests, or otherwise take any action which could reasonably be expected to adversely affect their personal or professional reputation.

10. Privacy

10.1 Privacy Laws

- (a) Each party agrees to comply with all applicable Privacy Laws in relation to any and all Personal Information that it collects from the other party in connection with the Agreement.
- (b) Without limiting clause 10.1(a), AutoRFP.ai will comply with the Privacy Laws as applicable in respect of Personal Information comprising Your Data.
- (c) Promptly upon becoming aware that an Eligible Data Breach of Your Data has occurred, a party will provide written notice of such breach and any material information available to it to the other party. Each party agrees to provide reasonable assistance required by the other party, if any, to investigate such Eligible Data Breach.

10.2 Security and back-ups

AutoRFP.ai must implement and maintain over the Term:

- (a) security practices that are reasonable to ensure that Your Data cannot be subject to any unauthorised copying, use, disclosure, access or loss; and
- (b) a data back-up plan consistent with good industry practice in the Jurisdiction (which will be provided to You on request) and AutoRFP.ai must keep back-ups of Your Data in accordance with that plan.

10.3 Access and complaints

You must promptly (and in any case, within 48 hours) notify AutoRFP.ai:

- (a) if You receive a request from an individual for access to or correction of Personal Information that disclosed to AutoRFP.ai by You or Your Personnel or End Users in connection with the Agreement, about the individual and comply with AutoRFP.ai's reasonable directions regarding providing such access to the individual or correcting such Personal Information; and
- (b) of any complaint from any person alleging a breach of the applicable Privacy Laws with respect to the Personal Information disclosed to AutoRFP.ai by You or Your Personnel or End Users.

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11. Termination

11.1 Termination for cause

Either party (**First Party**) may terminate the Agreement immediately by written notice if the other party is:

- (a) in breach of the Agreement and that other party has failed to remedy the breach within 30 days of a written notice to it from the First Party, specifying the breach and requiring it to be remedied;
- (b) in breach of the Agreement and that breach is not capable of remedy, as reasonably determined by the First Party; or
- (c) subject to an Insolvency Event.

11.2 No prejudice of rights

Termination will not prejudice or affect any right or action which has accrued or will thereafter accrue to either party.

11.3 Consequences of termination or expiry

Upon termination or expiry of the Agreement:

- (a) the Licence terminates immediately;
- (b) AutoRFP.ai will cease to provide the Software and Services;
- (c) all monies owing under the Agreement become immediately payable and due;
- (d) no refund is due to You if AutoRFP.ai terminates the Agreement in accordance with clause 11.1;
- (e) unless otherwise agreed, each party must promptly return or (if requested to do so by other party) destroy all Materials or Confidential Information belonging to the other party in that party's possession or control;
- (f) subject to clause 6.4(g), AutoRFP.ai may de-identify any of Your Data or Personal Information stored on the Portal at the date of termination or expiry, and may continue to use that de-identified data for our own purposes (including but not limited to: providing and improving our services; developing new service or product offerings; and identifying business trends); and
- (g) on Your written request, AutoRFP.ai must return to You or destroy any of Your Data or Personal Information stored on the Portal at the date of termination or expiry.

11.4 Survival

The following clauses survive termination or expiry of the Agreement: clause 5.5 (Intellectual Property Rights), clause 9 (Confidential Information), clause 10 (Privacy), clause 11.3 (Consequences of Termination), this clause 11.4 (Survival), clause 12 (Liability), and clause 9.3 (Publicity).

12. Liability

12.1 Exclusion of Liability

To the extent permitted by Law, in no event will either party be Liable:

- (a) to the other party for Consequential Loss; or
- (b) for Claims made by third parties arising out of or in connection with the Agreement.

12.2 Reserved

12.3 Implied terms

- (a) To the full extent permitted by Law, any term which would otherwise be implied into the Agreement is excluded.
- (b) To the full extent permitted by Law, You acknowledge that the Software (and all Documentation and Materials) is licensed by AutoRFP.ai on an 'as is, where is' basis and, subject to the express warranties and representations made in the Agreement, AutoRFP.ai makes no warranties or representations as to the Outputs and the Software (and anything else provided under the Licence).
- (c) In the event any Law implies or imposes terms into this deed which cannot be lawfully excluded, such terms will apply, save that the Liability of AutoRFP.ai for breach of any such term will be limited in accordance with clause 12.4(b).

12.4 Limitation of Liability

- (a) To the extent AutoRFP.ai is found Liable in connection with the Agreement, its Liability will be limited (at the option of AutoRFP.ai) to any one or more of the following:
 - (1) Re-supplying services to which the Liability relates or the supply of equivalent services; or
 - (2) reimbursing You for paying someone else to supply the services which the Liability relates, up to the limit in clause 12.4(b).
- (b) Subject to clause 12.4(c), to the extent that a party is Liable in connection with the Agreement (whether in contract, under a right of indemnity, tort or statute), then that party's cumulative Liability in the aggregate (to the fullest extent permitted by Law) will in no event exceed the Liability Limit.
- (c) To the extent that AutoRFP.ai is Liable for direct losses in connection with a breach of clause 10.1 of the Agreement (whether in contract, under a right of indemnity, tort or statute), then AutoRFP.ai's cumulative Liability in the aggregate (to the fullest extent permitted by Law) will in no event exceed the amount of recovered for such Liabilities under any of cyber insurances required to be held by AutoRFP.ai under the Required Insurances.

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12.5 Proportionate reduction

A party's liability under the Agreement will be reduced to the extent that the relevant Loss was caused or contributed to by the negligence or unlawful act or omission of the other party or its officer's employees, agents or representatives.

13. Dispute resolution

13.1 Dispute resolution process

- (a) A party claiming a Dispute may, within seven days of the Dispute arising, give the other party written notice providing particulars of the Dispute and designating the representatives nominated to settle the Dispute.
- (b) The parties must within 14 days of receiving the notice described in clause 13.1(a) above, meet and use their best efforts to resolve the Dispute.
- (c) If the Dispute has not been resolved within 30 days (or such other time as mutually agreed by the parties) of the notice described in clause 13.1(a) above, the parties shall enter into mediation led by an accredited mediator.

13.2 Urgent relief

Nothing in the Agreement shall prevent any party from seeking injunctive or urgent declaratory relief for any matter (including to protect Confidential Information) arising out of, or in connection with, the Agreement.

13.3 Obligations continue

Despite the existence of a Dispute, each party will at all times continue to fulfil all obligations under the Agreement, including in respect of confidentiality.

14. Miscellaneous

14.1 Notices

The parties may give each other notice under the Agreement by email or by post, at the address details specified in the Contract Details or otherwise notified to the other party from time to time. Any notice or other communication to or by any party must be in writing and in the English language.

14.2 Governing law and jurisdiction

The Agreement is governed by and construed in accordance with the laws of the Jurisdiction. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Jurisdiction.

14.3 Exercise rights

A single or partial exercise or waiver by a party of any right under or relating to the Agreement will not prevent any other exercise of that right or the exercise of any other right.

14.4 Merger

If the liability of a party to pay money under the Agreement becomes merged in any deed, judgment, order or other thing, the party liable must pay interest on the amount owing from time to time under that deed, judgment, order

or other thing at the higher of the rate payable under the Agreement and that fixed by or payable under that deed, judgment, order or other thing.

14.5 Moratorium legislation

Any law which varies prevents or prejudicially affects the exercise by a party of any right, power or remedy conferred on it under the Agreement is excluded to the extent permitted by law.

14.6 No assignment

A party must not assign, transfer or novate all or any part of its rights or obligations under or relating to the Agreement or grant, declare, create or dispose of any right or interest in it, without the prior written consent of each other party.

14.7 Remedies cumulative

The rights and remedies under the Agreement are cumulative and not exclusive of any rights or remedies provided by law.

14.8 Severability

If a provision of the Agreement is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of the Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

14.9 Further assurance

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to the Agreement and the transactions contemplated by it.

14.10 Costs

Each party is responsible for all its own costs incurred in the negotiation and performance of the Agreement including legal costs.

14.11 Variation

- (a) We may review and amend these Terms of Use from time to time, by posting the new version on the Portal. Your continued use of the Software after we post any changes to these Terms of Use will constitute Your agreement to those changes effective from that date.
- (b) Subject to clause 14.11(a), an amendment or variation to the Agreement is not effective unless it is in writing and signed by the parties.

14.12 Waiver

- (a) A party's waiver of a right under or relating to the Agreement, whether prospectively or retrospectively, is not effective unless it is in writing and signed by that party.
- (b) No other act, omission or delay by a party will constitute a waiver of a right.

14.13 Counterparts

The Agreement may be executed in any number of counterparts each of which will be considered an original but all of which will constitute one and the same

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instrument. A party who has executed a counterpart of the Agreement may deliver it to, or exchange it with, another party by emailing a PDF (portable document format) copy of the executed counterpart to that other party.

14.14 Whole agreement

The Agreement:

- (a) is the entire agreement and understanding between the parties relating to the subject matter of the Agreement; and
- (b) supersedes any prior agreement, representation (written or oral) or understanding on anything connected with that subject matter, including any "Letter of Intent" or similar document signed by the parties.

15. Definitions and interpretation

15.1 Definitions

In the Agreement:

Affiliate means in respect of a party, an entity that controls, is controlled by, or under common control with, that party.

Agreement has the meaning given to that term in clause 1.1.

AutoRFP.ai Background IP means all Intellectual Property Rights of AutoRFP.ai created or developed prior to or independently of the Agreement or the provision of Software or Services by AutoRFP.ai to You, including the Software and the algorithms used by or comprised in the Software.

Claim means, in relation to a person, any action, allegation, claim, demand, judgment, liability, proceeding, remedy, right of action or right of set-off made against the person concerned however it arises whether:

- (a) it is present, unascertained, immediate, future or contingent;
- (b) it is based in contract, tort, statute or otherwise; or
- (c) it involves a third party or a party to the Agreement.

Confidential Information means, in relation to each party (for the purposes of this definition, **Discloser**), all information disclosed by or on behalf of the Discloser, concerning or relating to:

- (a) know-how, trade secrets, ideas, marketing strategies, operational information, technical information and financial information;
- (b) proprietary software tools, business processes, project management methodologies and tools, software testing and verification methods, solution architecture models and solutions;
- (c) its business affairs (including products, services, customers and suppliers); and
- (d) other information, which, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential,

but excluding any such information:

- (e) which is publicly known;
- (f) which is disclosed to the other party without restriction by a third party (other than the Discloser) and without any breach of confidentiality by that third party; or
- (g) which is developed independently by the other party without reliance on any of the confidential information.

Consequential Loss means any of the following: loss of revenue; loss of profits; loss of opportunity to make profits; loss of business; loss of business opportunity; loss of use or amenity, or loss of anticipated savings; loss of data; special, exemplary or punitive damages; and any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into the Agreement, including any of the above types of loss arising from an interruption to a business or activity.

Currency has the meaning given to that term in the Order Form, or if none specified means Australian dollars.

Documentation means any user manuals, instructions or support information supplied by AutoRFP.ai for use of the Software, together with any revisions AutoRFP.ai may publish from time to time.

Eligible Data Breach has the meaning given to that term (or an equivalent term) in the applicable Privacy Law.

End User means any officers, employees and contractors engaged by You, who may use or access the Software.

End User Data means the data supplied by End Users in connection with the Software, including data which End Users input into the Software and feedback regarding the Software.

Exceptional Circumstance means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under the Agreement. Such circumstances include:

- (a) adverse changes in government regulations;
- (b) any disaster or act of God, lightning strikes, atmospheric disturbances, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (c) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution, cyber attacks, viruses or malware, data loss as a result of the actions of a third party;
- (d) strikes or industrial disputes; and
- (e) acts or omissions of any third party network providers (such as internet, telephony or power provider).

Expiry Notice has the meaning given to that term in clause 2.2(a).

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Fees means the sum of the Licence Fees, Services Fees and any Additional Services Fees.

Further Term has the meaning given to that term in clause 2.2.

Government Body means:

- (a) any person, body or other thing exercising an executive, legislative, judicial or other governmental function of any country or political subdivision of any country;
- (b) any public authority constituted by or under a law of any country or political subdivision of any country; and
- (c) any person deriving a power directly or indirectly from any other Government Body.

GST means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or associated Commonwealth legislation, regulations and publicly-available rulings.

Initial Term has the meaning given to that term in clause 2.1.

Insolvency Event means an event of bankruptcy or insolvency, an assignment for the benefit of creditors, the appointment of a receiver, receiver and manager, provisional liquidator, liquidator and official manager or any similar person to any assets of a person, a failure to comply with a statutory demand, or anything else which occurs which is analogous or has a substantially similar effect, under the laws of any jurisdiction, or the person is otherwise insolvent or unable to pay its debts as and when they fall due.

Intellectual Property Rights means all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trade marks, know-how, confidential information, patents, inventions, plant breeder's rights and discoveries and all other intellectual property as defined in Article 2 of the convention establishing the *World Intellectual Property Organisation 1967*.

Jurisdiction has the meaning given to that term in the Order Form, or if none specified means Queensland, Australia.

Law means any statute, rule, regulation, proclamation, order in council, ordinance, local law or by-law, whether:

- (a) present or future; or
- (b) State, federal or otherwise.

Liability means any liability, debt or obligation, whether actual, contingent or prospective, present or future, qualified or unqualified or incurred jointly or severally with any other person, and **Liable** has the corresponding meaning.

Liability Limit has the meaning given to that term in the Order Form or if none specified means the sum of all Licence Fees paid or payable by You under the Agreement

in the 12 months prior to the date upon which the Liability first arose.

Licence has the meaning given to that term in clause 3.1.

Licence Fee has the meaning given to that term in the Order Form.

Login Credentials means an individual's username, password, access key or code, or any other information required by an individual to access the Software.

Loss means any loss (including Consequential Loss), claims, actions, liabilities, damages, expenses, diminution in value or deficiency of any kind whether direct, indirect, consequential or otherwise.

Material means property, information, software, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.

New IP means all Intellectual Property Rights created or developed during the Term, in the course of, or in connection with the Agreement, including (without limitation) all Intellectual Property Rights in the Software Enhancements.

Order Form means a document which is agreed and signed by both parties, detailing the Software and Services required to be provided by AutoRFP.ai to You and the Fees for such Software and Services, including its schedules and annexures.

Output means reports, PDF, templates, or documentation generated by the Software as a result of Your use of the Software.

Personal Information has the meaning given to that term (or an equivalent term) in the applicable Privacy Law.

Personnel means in relation to a party, any employee, officer, agent, subcontractor, or Affiliate of that party.

Portal means the web-based interface accessible via the website autorfp.ai.

Privacy Law means:

- (a) the *Privacy Act 1988* (Cth); and/or
- (b) any legislation from time to time in force in any:
 - (1) Australian jurisdiction; and
 - (2) non Australian jurisdiction (to the extent that a party is subject to the laws of that jurisdiction),

affecting privacy, personal information or the collection, handling, storage, processing, use or disclosure of data.

Required Insurances has the meaning given to that term in the Order Form.

Services means the services detailed in the Order Form.

Scheduled Maintenance means ongoing preventative maintenance (including but not limited to security patches)

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or emergency maintenance in relation to any software used, or relied upon, to provide the Software.

Software:

- (a) means the software developed and owned by AutoRFP.ai at the time the Agreement is entered into but as modified, developed or enhanced by AutoRFP.ai from time to time (including any corrections or fixes) and which is provided to You; and
- (b) includes all Software Enhancements.

The Software will be provided as a service and made accessible by the Portal.

Software Enhancements means:

- (a) all enhancements, upgrades, improvements or modifications to the Software; and
- (b) any and all Intellectual Property Rights in those assets listed in clause 15.1(a).

Terms of Use means the terms and conditions contained in this document.

Tax means any present or future tax, levy, deduction, impost, withholding, charge or duty which is levied or imposed by any Government Body together with any interest, penalty or fine on those amounts.

Tax Invoice means the same as “tax invoice” in the GST Law.

Term means the Initial Term and any Further Term.

You means the party named as You in the Order Form, and **Your** has the corresponding meaning.

Your Data means the data supplied by You, Your Personnel or Your End Users and used in connection with the Software, including End User Data and Outputs.

Your Background IP means all of Your Intellectual Property Rights created or developed prior to or independently of the Agreement or the provision of Software or Services by AutoRFP.ai to You.

Where a term used in the Agreement appears in bold type in the table in the Order Form that term has the meaning shown opposite it in the Order Form.

1.2 Interpretation

- (a) Unless the contrary intention appears, a reference in the Agreement to:
 - (1) the Agreement or another document includes any variation or replacement of it despite any change in the identity of the parties;
 - (2) the singular includes the plural and the plural includes the singular;
 - (3) a person, partnership, corporation, trust, association, joint venture, unincorporated body, Government Body or other entity includes any other of them;

- (4) an item, recital, clause, subclause, paragraph, schedule or attachment is to an item, recital, clause, subclause, paragraph of, or schedule or attachment to, the Agreement and a reference to the Agreement includes any schedule or attachment;
- (5) a party includes the party’s executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
- (6) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
- (7) money is to the Currency; and
- (8) a time is a reference to Brisbane time unless otherwise specified.
- (b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of the Agreement.
- (e) A provision of the Agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.