

# 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 Service Level Agreement (if applicable);
- (c) the provisions of these Terms of Use, as amended under clause 14.11 from time to time; and
- (d) 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) the Service Level Agreement (if applicable);
- (d) these Terms of Use as incorporated under clause 1.1; and
- (e) 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; and
- (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) otherwise agreed in writing 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

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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

- (a) If you selected "Yes" in relation to Service Level Agreement in the applicable Order Form, AutoRFP.ai will use its reasonable endeavours to provide You with access to the Software during the Term in accordance with the SLA, with the exception of unavailability caused by events described in clauses 4.2 and 4.3.
- (b) If you selected "No" in relation to Service Level Agreement in the applicable Order Form, AutoRFP.ai will use its reasonable endeavours to provide You with access to the Software during the Term, 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 and You have failed to remedy that breach within 14 days of AutoRFP.ai giving notice to You.
- (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

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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.
- (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).
- (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 (2).

### 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;
- (c) the Software and Services will be performed with due care, diligence and skill; and
- (d) it shall not deliberately, recklessly or negligently introduce or code any virus or unauthorized disabling code into any software deliverables provided hereunder or into Your network or system. AutoRFP.ai shall use industry standard anti-virus software and devices to screen the Software on a regular basis to prevent any viruses, worms or other computer code that has the effect of disabling or interrupting the operating of a computer system or destroying, erasing or otherwise harming any data, software or hardware.

### 5.6 Limitation of liability for warranty

- (a) Notwithstanding clause 12.3(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 12.3(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.

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### 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:
  - (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 an 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 sixty (60) days from the date of AutoRFP.ai's Invoice, or such other period as specified on the Invoice.

### 7.2 Late or non-payment of invoices

Subject to the existence of a bona fide dispute pursuant to clause 7.4, 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 10% per annum from the due date until the date the outstanding amount is paid.

### 7.3 Fee increases

AutoRFP.ai may upon each renewal for a Further Term under clause 2.2, increase Fees or any other amounts payable under the Agreement with 60 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 30 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 30 days from the date of receipt of the 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 30 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. Taxes



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## 8.1 Payment

You must pay all Taxes which may be payable or determinable in connection with the execution, delivery, performance or enforcement of this Agreement or any payment or receipt or of any transaction contemplated by this Agreement.

## 8.2 Gross up

If You are required by Law to deduct or withhold Taxes from the Fee or any payment under this Agreement, You must:

- (a) make the required deductions and withholdings;
- (b) pay in accordance with the relevant law the full amount deducted or withheld;
- (c) deliver to AutoRFP.ai the receipt for each payment; and
- (d) increase the amount of the payment to AutoRFP.ai to an amount which will result in the receipt by AutoRFP.ai of the full amount which would have been payable to AutoRFP.ai if no deduction or withholding had been required.

## 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 provided, in each case, to the extent permitted by law, recipient notifies discloser a reasonable time prior to such disclosure (in order to permit discloser to seek appropriate protective measures); and recipient requests and supports discloser's efforts to seek appropriate protective measures.
- (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) AutoRFP.ai may during the Term only, use and publish Your name and logo along with a list of other customers without Your prior written consent.
- (b) Except for as specified in clause 9.3(a), AutoRFP.ai must not use Your name, logo or trademarks for any marketing or promotional activities, unless it obtains Your consent to do

so.

## 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.

## 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;

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- (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);
- (g) within 180 days of termination or expiration of this Agreement, on Your written request, AutoRFP.ai must return to You any of Your Data or Personal Information stored on the Portal at the date of termination or expiry;
- (h) After 180 days from termination or expiration of this Agreement, you agree that AutoRFP.ai may delete or destroy Your Data or Personal Information stored on the Portal; and
- (i) If You terminate this Agreement in accordance with clause 11.1, You shall receive a pro-rated refund equal to any portion of fees pre-paid but unused as at the effective date of termination.

### 11.4 Survival

The following clauses survive termination or expiry of the Agreement: clause (2) (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 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 12.3(b).

### 12.3 Limitation of Liability

- (a) Except as otherwise set forth below, 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 12.3(b).
- (b) Subject to clause 12.3(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 a party is Liable for Losses in connection with:
  - (1) gross negligence or willful misconduct;
  - (2) its indemnification obligations under clause 12.5 (Indemnification) of the Agreement; or
  - (3) breach of its obligations under clause 9 (Confidential Information) or clause 10 (Privacy) of the Agreement,

then that party's cumulative Liability in the aggregate (to the fullest extent permitted by Law) will in no event exceed three times the Liability Limit.

### 12.4 Proportionate reduction

A party's liability under the Agreement will be reduced to

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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.

### 12.5 Indemnification

- (a) **Third Party Claims.** To the fullest extent permitted by law: AutoRFP.ai must defend, indemnify and hold harmless You, and Your present, former, and future shareholders, successors and assigns (collectively, "Indemnified Parties") against all damages, losses, costs, expenses (including reasonable attorneys' fees, costs and expenses) and other liabilities arising out of any claims, demands, suits, or causes of action by third parties (collectively, "Claims"), arising out of or in connection with (i) any willful misconduct of AutoRFP.ai, its Affiliates or their Personnel; (ii) any breach of clauses 9 (Confidential Information) or 10 (Privacy) of this Agreement by AutoRFP.ai, its Affiliates or their personnel; or (iii) the violation of any Intellectual Property Rights of third parties resulting from Your use of the Software and Services in accordance with the Agreement.
- (b) **Procedures.** AutoRFP.ai has the right to control the defense of any Claim; provided however, that You may, at its election and at any time, take control of the defense and investigation of any Claim at the cost and expense and with the cooperation of AutoRFP.ai. Upon AutoRFP.ai's request, You will reasonably cooperate in such defense and AutoRFP.ai must reimburse You for its reasonable out-of-pocket expenses in providing such cooperation. You will provide prompt notification of any Claim; provided however, that any delay by You in giving such notice will not relieve AutoRFP.ai of its obligations pursuant to this clause 12.5, except to the extent that AutoRFP.ai demonstrates actual damage caused by such delay.
- (c) **Independent Obligation.** The obligations of AutoRFP.ai to defend, indemnify and hold harmless, the Indemnified Parties under this clause 12.5 are independent of each other and any other obligation of the parties under this Agreement.
- (d) **Insurance.** AutoRFP.ai shall maintain insurance coverage in accordance with Exhibit A, attached hereto and incorporated herein by this reference.

### 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 30 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) AutoRFP.ai 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 You.
- (b) You must not assign, transfer or novate all or any part of Your rights or obligations under or relating to the Agreement or grant, declare, create or dispose of any right or interest in it,



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without prior written notice to AutoRFP.ai.

### 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

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 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

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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.

**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.

**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*.

**Invoice** means a document that sets out the Fees along with the Taxes payable.

**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. For the avoidance of doubt, New IP does not include any of Your Data.

**Order Form** means a document which is agreed and

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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](https://autorfp.ai).

**Privacy Law** means any legislation from time to time in force in any applicable jurisdiction under these Terms of Use, affecting privacy, personal information or personal data, or the collection, handling, storage, processing, use or disclosure of data, and in the context of Australia, includes the *Privacy Act 1988* (Cth).

**Required Insurances** means the insurances AutoRFP.ai is required to hold, as set out in in the Order Form.

**Scheduled Maintenance** means ongoing preventative maintenance (including but not limited to security patches) or emergency maintenance in relation to any software used, or relied upon, to provide the Software.

**Service Level Agreement** or **SLA** means a document which is agreed and signed by both parties in writing, detailing the service levels required to be provided by AutoRFP.ai to You.

**Services** means the services detailed in the Order Form.

### 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.

**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.

## 15.2 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 Jurisdiction 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

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because that party or its advisers were responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.