

RED MARKER – TERMS AND CONDITIONS

Parties:

Red Marker: Red Marker Pty Ltd ABN 50 166 217 287 Level 12, 45 Clarence St, Sydney NSW 2000, Australia, +61290282000, sales@redmarker.ai, Attention: Sales.

Client: The individual or entity listed as the “Client” in the Order.

1. Definitions

In this Agreement, unless the context requires otherwise, the following definitions apply:

Agreement means these Terms and Conditions (including the additional information included at the end of this document) and each Order.

Authorised User means the individual(s) authorised by Red Marker to use the Red Marker Platform on behalf of the Client, being those who have been assigned a unique access login and password by Red Marker.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in New South Wales.

Claim means any claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a Party to this Agreement.

Commencement Date means the date of the first Order signed by the Parties or the subscription start date specified in that Order, whichever occurs first.

Commitment Term means a period of 12 months commencing on the subscription start date specified in an Order (or, where an Order specifies a different commitment term, that period as stated in that Order).

Confidential Information means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the Parties before, on or after the date of this Agreement, relating to the business, products, services, customers or other affairs of the Discloser of the information but does not include information which is in or becomes part of the public domain other than through breach of this Agreement.

Consequential Loss means any loss or damage which is indirect, consequential, special, punitive, exemplary or incidental, including any loss of profit, revenue, anticipated savings or business opportunity, loss or corruption of data or systems, or damage to goodwill however caused or arising as a result of the Agreement.

Corporations Act means the *Corporations Act 2001* (Cth).

Digital Content means all information and data in any media and form that Client inputs into the Red Marker Platform or is otherwise obtained from Websites.

Discloser means a discloser of Confidential Information.

Dispute is defined in clause 16.

Dispute Notice is defined in clause 16.

Documentation means manuals including release notes, reference guides, specifications, user guides or other documents and materials provided to Client in relation to the Red Marker Platform and/or the Services, as updated by Red Marker from time to time.

Feedback means collectively any information, responses or actions that Client or its Authorised Users provide to Red Marker (or its authorised agent) or through the Red Marker Platform regarding errors, problems, defects, or suggestions for changes and improvements to the Red Marker Platform and/or the Services for the purpose of improving the Rules, the Red Marker Platform and/or the Services.

Fees means the fees for the Services as set out in the applicable Order.

Force Majeure means any event or circumstances beyond the reasonable control of a Party including any fire, lightning strike, flood, earthquake, natural disaster, pandemic, epidemic, sabotage, nuclear contamination, terrorism, war or civil riot that occurs to the extent that it results in a Party being unable to perform an obligation under this Agreement.

Government Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

GST has the meaning given in the GST Law.

GST Law has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), and terms used which are not defined in this Agreement, but which are defined in the GST Law, have the meanings given in the GST Law.

Insolvency Event means in respect of a Party, the occurrence of one or more of the following events:

- a. the company stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- b. the company is insolvent within the meaning of section 95A of the Corporations Act;
- c. an order is made for the winding up or dissolution of the company;
- d. the company is deregistered under the Corporations Act or other legislation or notice of its proposed deregistration is given to it; or
- e. anything analogous to or of a similar effect to anything described above under the laws of any relevant jurisdiction.

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Law means any:

- a. law of Australia, including Commonwealth, State, Territory or local government legislation, or any regulations, by-laws, declarations, ministerial directions and other subordinate legislation;
- b. common law;
- c. Government Agency requirement or authorisation (including conditions in respect of any authorisation); and
- d. code of conduct, writ, order, injunction or judgment.

Liability means any expense, charge, cost, liability, loss, damage, claim, demand or proceeding (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent.

Order means an order issued by Red Marker to the Client in connection with this Agreement and signed by the Parties.

Party means a party to this Agreement, being (as applicable) Red Marker or the Client, and **Parties** means both of them.

Recipient means a recipient of Confidential Information.

Red Marker IP is defined in clause 9.

Red Marker Platform means the software program owned and operated by Red Marker to support businesses to identify risk within their digital content and includes any modifications, improvements and updates to it and the Documentation and Reports.

Reports means any report or other information generated by Red Marker, or through the Services, regarding the evaluation and management of Client's Digital Content through the Red Marker Platform.

Rules means the compliance rules (including disclaimer checkers) existing in the Red Marker Platform at any time, including the standard rules existing as at the Commencement Date and any standard or additional/custom rules added during the Term (including as created or developed in connection with any Services), and includes any amendments or updates to the Rules.

Services means the services particularised in an Order, which are to be provided by Red Marker to the Client subject to this Agreement.

Term is defined in clause 2.

Third Party Materials is defined in clause 5.

Use Parameters means the use parameters that apply to the Red Marker Platform and the Services, as set out in an Order.

Website means the websites or web domains that the Client has notified to Red Marker for the purpose of website and web domain scanning in connection with the Services (to the extent an Order includes such scanning).

2. Term

This Agreement commences on the Commencement Date and continues until terminated in accordance with clause 15 (Term).

3. Orders

- (a) Each Order forms part of this Agreement.
- (b) If there is any inconsistency between an Order and these Terms and Conditions, these Terms and Conditions prevail to the extent of the inconsistency.
- (a) Each Order commences on the date it is signed by both Parties. If the Order contains subscription services, the Client's right to access those services will commence on the subscription start date specified in that Order.

- (b) An Order will continue until all Services to be provided pursuant to that Order have been provided in full, or this Agreement is terminated, whichever occurs first. Unless the parties agree otherwise in writing, if the Order includes subscription services, those services will continue to be provided (and the relevant Order will continue) until this Agreement is terminated.

4. Services

- (a) Red Marker will provide the Services stated in an Order in accordance with that Order and this Agreement.
- (b) The Client may use the Services subject to, and only in accordance with, this Agreement.

5. Third Party Materials

- (a) Use of the Services may enable Client to access and/or use third party services, resources, content and information (Third Party Materials).
- (b) By accessing and/or using Third Party Materials in conjunction with the Services, Client agrees and acknowledges:
 - (i) it instructs Red Marker to scan and present Third Party Materials that the Client has selected or requested;
 - (ii) it assumes sole responsibility and all risk arising from or in connection with its access to and/or use of Third Party Materials;
 - (iii) Red Marker has no liability whatsoever to Client or any third parties in connection with Client's access and/or use of Third Party Materials; and
 - (iv) Red Marker does not represent that it will prevent or restrict Third Party Materials from being accessed or used by Client.

6. Acceptable Use

- (a) In connection with the Client's (including its Authorised Users') access and use of the Services, the Client must, and must ensure that its Authorised Users, at all times:
 - (i) use commercially reasonable efforts to prevent unauthorised access to or use of the Red Marker Platform, including keeping login details confidential and not permitting any third party to access or use its (or any of its Authorised Users') login details;
 - (ii) promptly notify Red Marker if it

becomes aware of or reasonably suspects any security breach, including any loss, theft, or unauthorised disclosure or use of its (or any of its Authorised Users') login details; and

- (iii) use or otherwise access Red Marker Platform only in accordance with this Agreement, applicable Laws.

- (b) The Client is solely responsible for the source, accuracy, quality, integrity and legality of all content that it (or its Authorised Users') inputs into or uses in connection with, or directs Red Marker to input into or use in connection with, the Red Marker Platform and must not make any claim against Red Marker for any Liability arising in that regard.

7. Prohibited Acts

- (a) Client represents and warrants that Client and its Authorised Users will not attempt to nor permit or assist any other person to do any of the following:
 - (i) derive or attempt to derive the source code of all or any portion of the Red Marker Platform including by reverse engineering, disassembly, decompilation or by any other means;
 - (ii) interfere or tamper with any security- related or other features of the Red Marker Platform;
 - (iii) "frame", "mirror" or otherwise incorporate any part of the Red Marker Platform into any other website without Red Marker's prior written consent;
 - (iv) sub-licence, distribute, resell, transfer or provide a third party with access to any part of the Red Marker Platform and/or the Services;
 - (v) alter, remove or tamper with any of Red Marker's Intellectual Property Rights in the Red Marker Platform; and
 - (vi) assist or facilitate any third party to do any of the above acts.
- (b) In connection with the Red Marker Platform, the Client must not (and must ensure that its Authorised Users do not) input or use, or direct Red Marker to input or use, content owned by a third party if that input or use would infringe a third party's Intellectual Property Rights.
- (c) Client agrees to indemnify and hold Red Marker harmless against any Liability that may be suffered by Red Marker arising out

of Client's breach of this clause 7 (including breach resulting from its Authorised Users).

8. Fees

- (a) Client agrees to pay all Fees for the Services specified in each Order.
- (b) Unless specified otherwise in an Order, Fees for subscription services included in an Order will be invoiced monthly in advance and payable within 20 Business Days after the date of issue of the invoice.
- (c) All other Fees are invoiced as specified in an Order (or, if the Order does not specify invoicing details, upon completion of each relevant Service) and are payable to Red Marker within 20 Business Days after the date of issue of the invoice.
- (d) If any supply made under or in connection with this Agreement is subject to GST, the supplier may increase the consideration otherwise provided for by the amount of that GST and recover such additional amounts from the recipient. This paragraph (d) does not apply to the extent that the consideration is expressly agreed to be GST inclusive.
- (e) Red Marker may, no more than once in any 12-month period, and not during the applicable Commitment Term, increase the Fees payable under an Order by giving the Client not less than 60 days' notice in writing.
- (f) Without limiting any other right or remedy available to Red Marker, if the Client fails to pay any Fees due under this Agreement by the relevant due date, Red Marker may suspend the Client's (and its Authorised Users') access to the Red Marker Platform until payment is received in full.

9. Intellectual Property

- (a) Red Marker warrants that it owns all right, title to and interest in the Intellectual Property Rights in the Red Marker Platform, the Services, Documentation, Reports and Rules (**Red Marker IP**) and indemnifies Client all liability suffered or incurred by Client arising out of any actual or alleged infringement of a third party's Intellectual Property Rights through Client's access and use (in accordance with the terms of this Agreement) of the Red Marker Platform, the Services, Documentation, Reports and Rules. Nothing in this Agreement transfers ownership of any Red Marker IP to Client or any of its Authorised Users.
- (b) In consideration of the Fees and subject to the terms of this Agreement, to the extent an Order includes subscription services, Red Marker grants Client a limited,

revocable, non-exclusive, non-transferrable and non-sub-licensable licence to access and use the Red Marker Platform in accordance with the Use Parameters solely for its internal business use during the Term (or, if a shorter period is specified in an Order, for that shorter period only).

- (c) Client grants Red Marker a non-exclusive and non-transferable licence to use its Digital Content, to the extent necessary to:
 - (i) provide the Services and support its use of the Red Marker Platform; and
 - (ii) improve the accuracy of the Red Marker Platform, provided that Digital Content is de-identified in a manner that ensures Client cannot be identified as the author of the Digital Content.
- (d) Subject to paragraph (c) above, Client retains all right, title to and interest in the Intellectual Property Rights in its Digital Content.
- (e) Client agrees that any Feedback it provides to Red Marker will be the sole property of Red Marker and deemed the Confidential Information of Red Marker.
- (f) Red Marker may use Feedback in any manner it deems fit, including incorporating it in its products and/or services.

10. Publicity

Subject to Client's prior written consent, Red Marker may use Client's name and disclose that Client is a user (or, after termination, was a former user) of the Red Marker Platform in advertising, press, promotion and similar public disclosures, including at trade shows.

11. No warranties

- (a) The Client acknowledges and agrees:
 - (i) the compliance functions of the Red Marker Platform and the Services are designed to act as a compliance aid and educational tool. Red Marker has not received and does not provide legal or regulatory sign-off, advice or opinions upon which Client or Authorised Users may rely. The Red Marker Platform and the Services do not replace the need for a trained compliance or legal professional to check and approve Digital Content prior to publication. Red Marker does not warrant that the Red Marker Platform or the Services will identify any or all potential breaches of laws and

- expressly disclaims any liability whatsoever for any inability or failure of the Red Marker Platform or the Services to do so;
- (ii) Documentations and Reports may be incomplete, inconsistent and contain errors; and
- (iii) Red Marker may add, alter or remove functionality to the Red Marker Platform and/or the Services at any time and without prior notice to Client, but any changes will not diminish or remove existing functionality unless the diminished or removed functionality is being upgraded or replaced with another function.
- (b) Red Marker does not warrant that the Red Marker Platform or the Services will be able to access, input or verify:
 - (i) all Digital Content published on Websites as the Red Marker Platform cannot detect all types and formats of content; or
 - (ii) any Digital Content at a particular point in time or over a period of time, including due to ongoing development and maintenance of Websites and/or the Red Marker Platform.
- (c) Red Marker expressly disclaims any Liability arising out of the matters referred to in paragraphs (a) and (b) above.
- (d) Other than the express warranties set out in this Agreement, to the extent permitted by law, Red Marker disclaims any and all warranties, whether express or implied by statute or otherwise with respect to the Red Marker Platform, the Services and any and all other material provided to Client by Red Marker under this Agreement, including but not limited to, any warranty that the Red Marker Platform will function without interruption or that it is error-free or any implied warranties of acceptable quality or fitness for purpose.
- (e) The Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth) and other similar consumer protection laws and regulations may imply certain rights, consumer guarantees, warranties and remedies relating to the Services which cannot be excluded, restricted, qualified or modified by Red Marker (**Non-Excludable Guarantees**). Nothing in this Agreement excludes or attempts to exclude the Non-Excludable Guarantees afforded to a consumer under the ACL.

13. **Limitation of Liability**

- (a) Subject to paragraph (b) below, Red Marker's liability for all matters related to this Agreement will be limited in the aggregate to the Fees paid by Client for the Services in the 12-month period immediately preceding the event which gave rise to such liability.
- (b) Nothing in this Agreement, at law or otherwise shall limit the liability of Red Marker to the extent such liability arises out of, or in connection with, the fraud, wilful misconduct or gross negligence of Red Marker or in relation to the indemnity provided by Red Marker under clause 9(a).
- (c) Notwithstanding any other provision of this Agreement, to the extent permitted by law, neither Party will be liable for any Consequential Loss.
- (d) Each Party is under a duty to take reasonable steps to mitigate any loss suffered by it in connection with this Agreement and each Party's Liability for loss in connection with this Agreement is reduced to the extent that the other Party failed to take reasonable steps to mitigate loss.

14. **Confidentiality**

- (a) Each Party acknowledges that the Confidential Information of the other Party is valuable to the other Party. Each Party undertakes to keep the Confidential Information of the other Party secret and to protect and preserve the confidential nature and secrecy of the Confidential Information of the other Party.
- (b) A Recipient may only use the Confidential Information of the Discloser for the purposes of performing the Recipient's obligations or exercising the Recipient's rights under this Agreement.
- (c) A Recipient may not disclose Confidential Information of the Discloser to any person except:
 - (i) representatives, legal advisers, auditors and other consultants of the Recipient who require it for the purposes of performing its obligations or exercising its rights under this Agreement and then only on a need to know basis; or
 - (ii) if required to do so by law or a stock exchange.
- (d) Upon the termination of this Agreement, the Recipient must immediately deliver to the Discloser, or securely destroy, all documents or other materials containing the Discloser's Confidential Information

which are in the Recipient's possession, power or control or in the possession power or control of persons who have received the Confidential Information from the Recipient. For the avoidance of doubt, this paragraph (d) shall not apply to the extent that the Recipient is required to retain one (1) copy of the Confidential Information to comply with applicable laws relating to the retention of records, for the purpose of any actual or prospective litigation or contentious matters, or to comply with its internal record keeping policies, provided that any such Confidential Information shall remain subject in all respects to the terms of this Agreement.

15. **Termination**

- (a) This Agreement may be terminated at any time after the expiry of the Commitment Term by a Party providing at least 20 Business Days written notice to the other Party.
- (b) If Red Marker terminates pursuant to paragraph (a) above, it will refund to the Client any Fees paid in advance under this Agreement that relate to the period after the effective date of termination to the extent the relevant Services have not been provided by that date.
- (c) If the Client terminates pursuant to paragraph (a) above, any Fees paid in advance are non-refundable.
- (d) This Agreement may be terminated at any time immediately by a Party if the other Party:
 - (i) is in material breach of any of its obligations under this Agreement and it has not rectified the breach within 10 Business Days of receiving written notice requiring it to do so; or
 - (ii) suffers an Insolvency Event.
- (e) Upon termination of this Agreement, all Orders will also terminate and the Client must:
 - (i) cease accessing and using the Red Marker Platform including any Documentation supplied in connection with the Services for any purpose whatsoever, including to view Digital Content or Reports; and
 - (ii) destroy all login details in its possession and the possession of its Authorised Users.
- (f) Upon termination of this Agreement other than by the Client under paragraph (d)

above, the Client must, within 5 Business Days after the date of termination, pay to Red Marker an amount equivalent to the Fees applicable to the Services that were provided by Red Marker prior to the date of termination to the extent the Client has not paid for those Services in advance. Without limitation, the amount payable on termination may include a pro-rata amount for any applicable subscription where termination is part-way through a payment period (usually a month).

- (g) Termination of this Agreement does not affect the rights of a Party which have accrued up to the date of such termination.

16. **Dispute Resolution**

- (a) If any dispute arises between the Parties with respect to the construction, effect or operation of this Agreement, or with respect to any matter connected with this Agreement or arising out of it (**Dispute**), the Parties must take the following steps to attempt to resolve the Dispute:
 - (i) either Party may serve a written notice on the other Party stating the nature of the Dispute and invoking the dispute resolution processes set out in this clause 16 (**Dispute Notice**); and
 - (ii) the Parties must meet within 10 Business Days after the date of the receipt of the Dispute Notice, or such other period as the Parties agree in writing, and negotiate in good faith to resolve the Dispute.
- (b) If the Dispute is not resolved within 20 Business Days after receipt of the Dispute Notice, or such other period as the Parties agree in writing, the Dispute will be referred to mediation with the Parties to agree on a mediator who possesses the requisite skills and qualifications to assist the Parties in resolving the Dispute.
- (c) The Parties will equally share all the costs of the mediation, including without limitation any fees charged by the mediator.
- (d) Pending the resolution of a Dispute in accordance with this clause 16, the Parties will observe and perform the terms and conditions of this Agreement.
- (e) Except for the purpose of obtaining urgent interlocutory relief or pursuing unpaid Fees, neither Party may commence or maintain any proceedings in any court with respect to a Dispute, unless and until that Party has complied with the procedures in this clause 16.

17. **Notices**

- (a) Any notice given in connection with this Agreement must be in legible writing and must be addressed to a Party and either hand delivered to, or sent by post to the relevant address or emailed to the relevant email address:
 - (i) for Red Marker, as set out on page 1 of this document; and
 - (ii) for the Client, as set out in an Order.
- (b) A notice is taken to have been given:
 - (i) in the case of being hand delivered, on the date on which it is delivered;
 - (ii) in the case of being sent by post, on the fifth (ninth if sent to an address in another country) day after the date of posting; or
 - (iii) in the case of delivery by email, at the time sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

18. General

18.1 Interpretation

The following apply in the interpretation of this Agreement, unless the context requires otherwise:

- (a) a reference to any Act, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it;
- (b) a reference to the singular includes the plural number and vice versa;
- (c) a reference to a party means a person who is named as a party to this Agreement;
- (d) person includes a firm, corporation, body corporate, unincorporated association and a governmental authority;
- (e) a reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this Agreement, their substitutes and assigns;
- (f) includes means includes but without limitation;
- (g) where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning;
- (h) a reference to doing something includes an omission, statement or undertaking

(whether or not in writing) and includes executing a document; and

- (i) a heading is for reference only. It does not affect the meaning or interpretation of this Agreement.

18.2 Governing Law

This Agreement is governed by the law of New South Wales. Each Party submits to the non-exclusive jurisdiction of the courts of New South Wales and its appellate courts.

18.3 Waiver

A provision of this Agreement or a right created under it, may not be waived or varied except in writing, signed by the Party or Parties to be bound.

18.4 Costs

Each Party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.

18.5 Severability

If any part or provision of this Agreement is judged invalid or unenforceable in a jurisdiction, it is severed for that jurisdiction, and the remainder of this Agreement will continue to operate.

18.6 Assignment

Neither Party may assign its rights and obligations under this Agreement without the prior written consent of the other Party, which consent must not be unreasonably withheld or delayed.

18.7 Remedies

The rights of a Party under this Agreement are cumulative and not exclusive of any rights provided by law.

18.8 Amendments

Any amendment to this Agreement has no force or effect, unless effected by a document executed by the Parties.

18.9 Survival

Clauses 5 and 7 to 18 (inclusive) survive termination of this Agreement.

18.10 Entire Agreement

This Agreement constitutes the entire agreement between the Parties in respect of its subject-matter and supersedes any previous understandings or agreements on that subject-matter.

18.11 Relationship of the Parties

Nothing in this Agreement is intended to create a partnership, joint venture, or agency relationship between the Parties, and each of the Parties agree that they are entering into this Agreement only as independent contractors.



Additional information regarding Orders

Orders: Each Order will specify the Services that the Client has purchased pursuant to that Order.

An Order may include one or more packages below. It may also include one or more custom Rules (also known as "Custom Risk Detection") and/or other services agreed between the parties.

Packages (see the relevant Order for details of which of the following is included in that Order):

Document Scanning - Enterprise Subscription

These are ongoing annual subscription packages.

Generally, Document Scanning includes access to the Red Marker Platform for document scanning and the application of Custom Risk Detection to these documents to identify probabilistic legal, compliance and brand risks. Red Marker provides the Red Marker Platform, a software as a service platform that analyses digital marketing content for probabilistic risk.

Document scanning with the Red Marker Platform supports the following content (as amended from time to time): <http://support.redmarker.ai/en/articles/4106535-document-scanning-service-information>

Web Reports - Annual Subscription

These are ongoing annual subscription packages.

Generally, this includes Red Marker preparing a monthly detailed report for the Client following a scan of nominated websites by Red Marker using the Red Marker Platform and the application of Custom Risk Detection to these websites to identify probabilistic legal, compliance and brand risks.

Web scanning with Red Marker supports the following content (as amended from time to time): <http://support.redmarker.ai/en/articles/4106742-web-scanning-service-information>

Web Reports – One-Off Web Report

This is a non-recurring package, for a one-off scan and report.

Generally, this includes Red Marker preparing a one-off detailed report for the Client following a one-off scan of nominated websites by Red Marker using the Red Marker Platform and the application of Custom Risk Detection to these websites to identify probabilistic legal, compliance and brand risks. This package does not provide the Client with access to the Red Marker Platform.

As noted above, web scanning with Red Marker supports the following content (as amended from time to time): <http://support.redmarker.ai/en/articles/4106742-web-scanning-service-information>

Please note the following:

1. Where applicable, an Order will include further details of what is included with that Order. The inclusions are subject to change from time to time at Red Marker's discretion, but any changes will not diminish or remove existing features and functions unless the diminished or removed feature or function is being upgraded or replaced with another feature or function.
2. Custom Rules (also known as "Custom Risk Detection") as specified in the Order can be accessed and used an unlimited number of times during the Term, so long as a subscription package is maintained.