

## RESPONSIGHT TERMS AND CONDITIONS OF BUSINESS

Welcome to ResponSight, a security breach detection and analytics software and service provider. These Terms and Conditions of Business (**Terms**) explain our obligations as a service provider and your obligations as a customer. Please read them carefully.

These Terms apply to (a) our software products (including applications, modules, plugins, mobile devices and APIs) ("**Software**") (b) our hosted services interface ("**Hosted Services**") and (c) our implementation, consulting and managed services ("**Professional Services**") as specified in an Order Confirmation, and to your use of each of them (together, the Software, Hosted Services and Professional Services comprise the "**Services**"). These Terms include any document referred to in them, including an Order Confirmation (as defined below), information, user guides and other documentation that we produce in respect of our products and services ("**Documentation**") and our privacy policy available at <https://www.responsight.com/privacy-policy/>.

These Terms are binding on any use of the Software or Professional Services of ResponSight Pty Ltd ("**us**", "**we**" or "**ResponSight**") and apply to you from the earlier of (a) acceptance of an Order Confirmation (as defined below) by us and you (including electronic acceptance), or (b) the time that ResponSight provides you with access to the Software or Professional Services.

ResponSight's Services are continuously evolving, with regular Updates (as defined in Section 3) made available. ResponSight reserves the right to change these Terms at any time, effective upon the posting of modified Terms. If a revision meaningfully reduces your rights, we will notify you of the change by sending an email to the address we have on record for you. If we modify these Terms during the Initial Term (as defined in section 6) and we have agreed to fixed obligations for you for the Initial Term in an Order Confirmation, the modified version of these Terms in respect of those fixed obligations will be effective at the end of the Initial Term.

By registering to use or using the Services you acknowledge that you have read and understood these Terms and have the authority to act on behalf of any person for whom you are acting. If you are agreeing to these terms as an individual "**you**" refers to you individually. If you are agreeing to these terms as a representative of an entity, you represent that you have the authority to bind that entity and "**you**" refers to that entity. If you do not agree with all of these terms, do not access or otherwise use the Services.

These Terms were last updated on 20 October 2016.

### 1. USE AND ORDERING

**Ordering Direct.** You can order Software or Professional Services by requesting an order online or in person to a ResponSight representative and selecting from the alternative ways in which Software, Hosted Services and Professional Services can be provided ("**Order**"). We will send you an order confirmation ("**Order Confirmation**") to indicate our acceptance of your Order. The Order Confirmation incorporates these Terms.

**Administration.** You must nominate your contacts and their contact details in an Order so that we can communicate with you, and you must notify us if these details change. If so specified in an applicable Order Confirmation, you will be able to authorise one or more people to use the Software and other Services. You accept responsibility for the actions of each person that you authorise or enable to use the Software and other Services.

**Hosted Services.** Where your Order Confirmation is in respect of Hosted Services, subject to these Terms, we grant you a non-exclusive and non-transferrable right to access and use the Hosted Services for the Term. In respect of such Hosted Services:

- You acknowledge and agree that we may make changes to the Hosted Services from time to time, such as changing, adding and removing functions.
- You acknowledge and agree that the Hosted Services may be unavailable from time to time due to maintenance activities, technical problems, or other circumstances beyond our reasonable control.
- You acknowledge and agree that you are responsible for taking steps to ensure that the means by which you access and use the Hosted Services do not expose your computer systems and other devices to viruses, worms and other malicious code.

**Software.** Subject to these Terms, we grant you a non-exclusive and non-transferrable license (with no right to sublicense) to install and use Software for the Term. In respect of such Software:

- You are responsible for installing and implementing the Software and any Updates, unless you have elected to acquire Professional Services which include implementation services.
- You may create copies of the Software to the extent reasonably necessary to install and operate the Software for use in accordance with these Terms, and to install and operate the Software for use in accordance with these Terms, and to create backup and archival copies to the extent reasonably required in the normal operation of your systems. All such copies must include a reproduction of all copyright, trademarks or other proprietary notices contained in the original copy of the Software.
- You are responsible for providing the Environment and ensuring the Environment functions properly, and for implementing appropriate data backup and security measures. "Environment" means the systems, networks, servers, equipment, hardware, software and other material specified in Service materials (as defined below) or an Order Confirmation on which, or in connection with which, the Software will be used.

**Professional Services.** Subject to these Terms, we will provide you with the Professional Services set out in an applicable Order Confirmation. We may subcontract the performance of any Professional Services or any support and maintenance services, but we will remain responsible to you for the delivery of those services. Unless stated otherwise in an Order

Confirmation, we will retain all rights, title and interest in and to any materials (including documentation, deliverables, modifications, enhancements and derivative works) ("**Service Materials**") that are created by us or on our behalf in connection with any Professional Service or other products or services that we provide to you. To the extent that the ownership of any contribution by you or your employees or contractors to the creation of the Service Materials is not, by operation of law or otherwise, vested in ResponSight, you hereby assign and agree to assign to us all right, title and interest in and to such Service Materials, including without limitation all the Intellectual Property Rights (as defined in Section 5) therein, without the necessity of any further consideration, and you will cause your employees and contractors to do the same and waive all their moral rights in such Service Materials upon our request. Any Service Materials that we provide to you must only be used by you in relation to the applicable Services, and your use of Service Materials is subject to the same terms and conditions that apply to the applicable Services.

### 2. YOUR OBLIGATIONS

**Restrictions.** You shall be solely responsible for your actions and the actions of your users while using the Software or other Services Unless expressly stated otherwise in these Terms or your Order Confirmation:

- you and your users may only use the Software and other Services in the Territory (defined in your Order Confirmation) for your internal business purposes, and the only users you may authorise to use the Software or other Services are your staff and your contractors;
- you and your users must not use the Software or other Services to provide services to another person, or allow the Software to be used by any person through any outsourced service provision, timesharing, managed service or any similar kind of arrangement, or incorporate or combine any Software or other Services in any product or service that you provide to any person;
- you and your users must not license, sub-license, reproduce, modify, create derivative works of, sell, exploit, rent, lease, transfer, assign, distribute or disclose the Software or other Services or any part of them;
- you and your users must not modify, reverse engineer, disassemble, decompile, reverse compile or otherwise try to access or reproduce the operation of the Software or other Services and must not modify, attack, disrupt or circumvent any Software, technology or other material used by us to provide or control access to the Software or other Services;
- you and your users must maintain and not alter or remove any copyright, trademark or other protective notice in the Software, other Services and/or Service Materials or in any copy of or any component of either of them, and
- you must not directly or indirectly assist or permit any other person to do any of these things.

**Your Systems.** You are responsible for (a) obtaining, deploying and maintaining your internal website(s), servers and other equipment and software used in the conduct of your business, and all computer hardware, software, modems, routers and other communications equipment necessary for you and your users to access and use the Services; (b) contracting with third party ISP, telecommunications and other service providers to access and use the Services via the Internet; and (c) paying all third party fees and access charges incurred in connection with the foregoing. Except as specifically set forth in these Terms or an Order Confirmation, we shall not be responsible for supplying any hardware, software or other equipment to you under these Terms.

### 3. OUR OBLIGATIONS

**Support.** We will provide support services in relation to the Services during the Term according to the support plan described in the applicable Order Confirmation and in ResponSight's Support Services Policy, available at <https://www.responsight.com>. We may change our Support Services Policy from time to time but any such change will only take effect from the commencement of your next Renewal Term (as defined below). Any additional Software that we provide to you in connection with our support services for Software (including minor and major releases or updates, patches, fixes, modifications, etc.) ("**Updates**") will be deemed to be Software for the purposes of these Terms.

**Availability.** We will use commercially reasonable endeavors to make the Services specified in your Order Confirmation available 24 hours a day, seven days a week, except for planned maintenance carried out during our maintenance window, unscheduled maintenance that we determine is required urgently or for circumstances beyond our reasonable control. **TO THE EXTENT PERMITTED BY LAW, WE DO NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE AVAILABILITY OF THE HOSTED SERVICES OR THAT THE HOSTED SERVICES OR THE SOFTWARE WILL BE ERROR-FREE OR UNINTERRUPTED.**

### 4. CONFIDENTIALITY AND DATA PROTECTION

**Confidentiality.** Except to the extent permitted or required by these Terms, each party must not use or disclose any of the other party's Confidential Information. You acknowledge and agree that we may use your Confidential Information for the purpose of performing our obligations to you under these Terms or as otherwise permitted by these Terms. Each party may also disclose Confidential Information when required to do so by law or any regulatory authority, and to its representatives whose duties reasonably require such disclosure, provided the disclosure is made on a confidential basis to the extent possible. **Confidential Information** of a party (**Discloser**) means information treated by the Discloser as confidential or which the other party (**Recipient**) knows (or ought to know) is confidential, and which is disclosed by the Discloser to the Recipient, whether before or after the acceptance of these Terms, as well as all notes and other records prepared by the Recipient based on or incorporating that information; but excludes information that: is in or subsequently enters the public domain other than as a result of a breach of confidentiality by

the Recipient or any of its permitted disclosees; is lawfully obtained by the Recipient from another person entitled to disclose such information; or is independently developed by the Recipient.

**Data.** Our Software is designed so as to minimize the collection of your personal information, private information or sensitive corporate information by us, but to the extent we collect such information inadvertently we will take reasonable measures to protect it in accordance with our privacy policy. We will treat any material that is uploaded by you or your users in the course of use of the Hosted Services (“**Your Data**”) as your property. The term “Your Data” includes text, data, photos, video, audio and anything else that you upload or transmit using the Hosted Services. You grant us a non-exclusive, worldwide, royalty-free and irrevocable licence and right to collect, use, copy, store, transmit, modify and create derivative works of Your Data for the purpose of providing the Hosted Services to you, as required for benchmarking, analysis and the enhancement of the Software and other Services and as otherwise permitted by these Terms. Your Data will be held in encrypted format at all times in the hosted servers to maintain confidentiality and ensure security of Your Data. You agree that we may disclose Your Data to our service providers and transmit Your Data to and from our service providers, and you agree that those service providers can also store and transmit Your Data, for purposes permitted by these Terms.

**Data protection and use of third parties.** We will only use third parties to host the Services and to transmit and store data (including Your Data) in accordance with any security measures as specified in the relevant Order Confirmation.

**Compliance with laws.** You agree that you and your users must comply with all applicable laws (including data protection laws) in connection with the use of the Services. You agree that you are solely responsible for considering and complying with your obligations to third parties and your obligations under all applicable laws, including notifying and obtaining the consent of third parties (where applicable), in relation to your use of the Services.

**Feedback and other data.** If you provide us with any suggestions, questions, requests, comments or ideas in relation to the Services (“**Customer Feedback**”), you agree that we may use, exploit, reproduce and disclose that Customer Feedback in any way whatsoever and without any obligation to pay you any royalty, fee or any other amount. If you choose to give us Customer Feedback, it will not be Your Data or your Confidential Information for the purposes of these Terms. We may compile statistical, usage and performance information related to the provision of the Services including the general characteristics of the material uploaded by you in the course of your use of the Services. We may use that information and material to improve our products and services, as reasonably required for benchmarking and analysis, to create new products and services, and for marketing purposes. We will only use information and material that does not identify you for this purpose.

## 5. INTELLECTUAL PROPERTY RIGHTS.

**Exclusive property of ResponSight.** You agree that any and all Intellectual Property Rights and other proprietary rights that subsist in or arise in connection with the Software, Services and the Service Materials, including Updates and modifications to any of them, anywhere in the world, are our exclusive property. You have no right in or to the Software, Services or the Service Materials apart from the rights expressly granted to you by these Terms and any rights granted by law which cannot be excluded by contract with you. We warrant to you that we have the right to grant the rights referred to in these Terms in the Territory.

**IPR definition.** In these Terms, **Intellectual Property Rights** means all rights in or to any patent, invention, copyright, work, database rights, registered design or other design right, utility model, trade mark (whether registered or not and including any rights in get up or trade dress), brand name, service mark, trade name, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.

## 6. TERM AND TERMINATION.

**Term.** The term for which you are permitted to use the Software or other Services shall be as specified in an Order Confirmation (**Term**) and shall include a minimum initial term commencing on the date of an Order Confirmation (**Initial Term**) and renewal terms (**Renewal Term**).

**Renewal. IMPORTANT NOTICE:** After the Initial Term, and following the end of each subsequent Renewal Term, unless otherwise specified in an Order Confirmation, the Term of this agreement will be automatically renewed for a further Renewal Term as specified in the Order Confirmation. If you have provided us with direct debit authorisation, the fees for the Renewal Term will automatically be deducted from your nominated bank account at the commencement of the Renewal Term unless you have agreed a payment plan with us, in which case your payment plan will rollover and continue for the Renewal Term. If you do not want the Term to automatically renew for a further Renewal Term, you must notify us at least 30 days before the start of the next Renewal Term.

**Suspension for breach.** We may suspend your use of or access to the Software or other Services if we reasonably believe that you or your any of your users have breached these Terms. Any suspension pursuant to this clause will not entitle you to any refund, credit or right to terminate these Terms.

**Termination for material breach.** Either party may terminate their obligations pursuant to these Terms at any time immediately, or at such later date as that party chooses, by written notice to the other party if (a) the other party materially breaches these Terms and fails to remedy such breach within 30 days after receipt of notice from the first party specifying the breach and requiring it to be remedied; or (b) if the other party materially breaches these Terms and the breach is incapable of remedy; or (c) if you infringe our Intellectual Property Rights; or (d) if the other party is subject to an Insolvency Event. In these Terms, **Insolvency Event** means in relation to a party, where that party becomes subject to any

form of insolvency administration; ceases to carry on business; ceases to be able to pay its debts as they become due; any step is taken by a mortgagee or chargee to take possession or dispose of the whole or part of the that party’s assets, operations or business; any step is taken to enter into any arrangement between that party and its creditors; or where any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person in respect of the whole or part of that party’s assets, operations or business. A breach of these Terms by one of your users shall be deemed a breach of these terms by you.

**Cease use.** Upon termination or expiration of the Term for any reason, you and your users must cease all use of the Services and the Service Materials. At our request, within 30 days after termination or expiration of the Term, you must, at our election, either destroy or return to us all copies of the Software, Service Materials, Documentation and our Confidential Information then in your possession, custody or control.

## 7. FEES

**Usage fees.** Your Order Confirmation will set out the fees and other charges payable by you (“**Fees**”) for use of Software and in respect of any other Services. The Fees may be fixed for the Initial Term as specified in an Order Confirmation. After the Initial Term, an Order Confirmation may provide for the basis on which the Fees will increase. If the Order Confirmation does not so provide, the Fees may be increased in accordance with ResponSight’s standard pricing approach and ResponSight will notify you of such increases at least 30 days before the increase effective.

**Initial fees.** If specified in an Order Confirmation, fees may be payable upfront prior to commencement of a Software license or access to the Services. If so, once we have received any initial Fees, we will provide you with the applicable login details by sending these to the primary contact email address nominated on the Order. You acknowledge that your right to use any Services is conditional upon us having received payment of Fees specified in an Order Confirmation.

**Payment terms.** You agree to pay all Fees in accordance with these Terms and any Order Confirmation. If no payment terms are specified in an Order Confirmation, the Fees must be paid within 30 days from the date of receipt of an applicable invoice. Except as expressly provided in these Terms or in any Order Confirmation, and to the extent permitted by law, all Fees and any other amounts paid or payable under these Terms or any Order Confirmation are non-refundable, non-cancellable and not subject to any credits.

**Direct debit.** If you have authorised us to direct debit your Fees from your nominated bank account, your Fees will automatically be deducted from your nominated bank account on the commencement date specified in your Order Confirmation and in accordance with clause 6 for any Renewal Term, unless you have agreed a payment plan with us, in which case the Fees will be deducted in accordance with that agreed payment plan.

**No set off.** All amounts payable under these Terms must be paid in full without set-off, deduction or other withholding of any amount. Should you be required by any law or regulation to make any deduction on account of tax or otherwise on any sum payable under these Terms, the sum payable will be increased by the amount of such tax to ensure that we receive a sum equal to amount to be paid under these Terms.

**Sales tax.** If any sales tax, value added tax or goods and services tax (“**Sales Tax**”) is payable on any supply made under these Terms by us to you, you must pay to us the amount of the Sales Tax, subject to receipt of a valid invoice.

**Usage limits.** The Order Confirmation may specify certain limits (“**Usage Limits**”) in relation to your use of the Software (such as the maximum number of users in both cases, and certain data or storage limits). If these Usage Limits are exceeded at any time, you agree to pay us any additional Fees that are set out in the Order Confirmation.

## 8. LIABILITY.

**Performance warranty.** We warrant that (i) the Services shall perform materially in accordance with the requirements and specifications agreed in these Terms and any Order Confirmation and (ii) except as otherwise provided in these Terms, the functionality of the Services will not be materially decreased during the Term. For any breach of either such warranty, your exclusive remedy shall be the re-supply of the Services or a refund of a reasonable amount of Fees to compensate for the decreased functionality, at our option.

**Capacity warranty.** Each party represents and warrants that it has the legal power to enter into these Terms.

**General Disclaimer.** Except as expressly provided herein, neither party makes any representations, warranties, conditions or guarantees of any kind, whether express, implied, statutory or otherwise, and each party specifically disclaims all implied representations, warranties, conditions and guarantees including any representations, warranties, conditions or guarantees of merchantability or fitness for a particular purpose, to the maximum extent permitted by applicable law.

**Security Disclaimer and Warning.** ResponSight provides no warranty or guarantee that its Services will detect security breaches or prevent cyber security issues outright and ResponSight Software should be one aspect of a broader cyber security governance and incident prevention policy implemented by you. ResponSight Software should not be seen as a replacement for such policies or for detailed and considered security protocols and cyber security training for users and their employees.

**Liability Cap.** To the extent permitted by law, our cumulative liability to you in respect of all claims made by you under or in connection with these Terms, whether arising out of breach of contract, negligence or any other tort, misrepresentation, under statute or otherwise, will not exceed in the aggregate the amount paid by you to us for Services in the 12 months immediately preceding the claim. In these Terms, **claim** means claim, cause of action, suit, proceedings, judgment, debt, fine, penalty, damage, loss, cost, expense or liability of any kind.

**No Consequential Loss Liability.** In no event shall either party have any liability to the other party for any lost profits or revenues, loss of data, loss arising from interruption to business, loss of goodwill or for any indirect, special, incidental, consequential or punitive damages however caused, whether in contract, tort, misrepresentation or under any other theory of liability, and whether or not the party has been advised of the possibility of such damages.

## 9. GENERAL.

**Force majeure.** Neither party shall be responsible for failure or delay of performance of an obligation if caused by (i) an act of war, terror, hostility or sabotage, (ii) an act of God, flood, fire or earthquake, (iii) electrical, Internet, or telecommunication outage or any other problem that is not caused by the obligated party, (iv) government restrictions (including the denial or cancellation of any license), or any other event outside the reasonable control of the party with that obligation ("**Force Majeure Events**"). Each party will use reasonable efforts to mitigate the effect of a Force Majeure Event. If such event continues for more than thirty (30) days, either party may terminate the Term upon written notice.

**Notices.** Any notice or communication given to a party under these Terms is only given if it is given in writing and either (i) delivered or posted to the party at its address and marked for the attention of the relevant department of officer, or (ii) faxed or sent by email to the party at its fax number or email address, or (iii) delivered by ResponSight through the Hosted Service. If a party gives the other party 3 business days' notice of a change of its address, email address of fax number, any notice or communication is only given by that party if it is delivered, posted, emailed or faxed to the latest address, email address or fax number. Any notice or communication is to be treated as given at the following time: If it is delivered, when it is left at the relevant address; if it is sent by post, 2 (or in the case of a notice or communication posted to another country, 5) business days after it is posted; if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number; if it is sent by email, as soon as the sender sends the email without indication of a subsequent sending error or rejection response; and if it is sent through the Hosted Service, at the time of posting. However, if any notice or communication is given on a day that is not a business day, or after 5pm on a business day in the place of the party to whom it is sent, it is to be treated as having been given at the beginning of the next business day.

**Entire agreement.** These Terms (and any documents or web links incorporated by reference) are the entire agreement between us and you regarding the Services and supersede all prior agreements, discussions, and representations regarding the subject matter hereof.

**Severability.** If any provision of these Terms shall be deemed invalid, illegal, void or for any reason unenforceable, that provision shall be deemed to be severable and shall not affect the validity or enforceability of any other provision.

**No assignment.** You may not, whether by merger, acquisition, sale of assets, operation of law, or otherwise, assign your rights or delegate your obligations under these Terms without our prior written consent.

**Amendment must be in writing.** An amendment of these Terms by you may only be agreed in writing signed by us.

**No waiver.** The failure of either party to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing.

**Governing law.** These Terms and the rights and obligations of the parties to and under these Terms shall be governed by and construed under the laws of the State of Victoria, Australia. The parties hereby consent to the exclusive jurisdiction and venue in the courts of the State of Victoria, Australia.

**Survival.** The following provisions will survive any termination or expiration of the Term: confidentiality and data protection, intellectual property rights, fees, liability, and general.

**Miscellaneous.** In these Terms, unless the contrary intention appears: (**laws**) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements; (**person**) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity; (**singular, plural and gender**) the singular includes the plural and vice versa, and a gender includes other genders; (**headings**) headings are for ease of reference only and do not affect interpretation; (**executors, administrators, successors**) a reference to a party is to either your or us (or both), and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes; (**grammar**) another grammatical form of a defined word or expression has a corresponding meaning; (**meaning not limited**) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions; (**time**) a reference to time is a reference to time in Melbourne, Australia; (**day**) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later; and (**currency**) unless stated otherwise, a reference to **dollar** or **\$** is to Australian currency.