

2cRisk End User Subscription Agreement

This End User Subscription Agreement (the **Agreement**) sets out the terms on which Health Risk Management Systems Pty Ltd ABN 24 137 158 804 registered office at Vincent's Chartered Accountants, Level 34, 32 Turbot Street, Brisbane, QLD 4000 (**HRMS**) agrees to grant the organisation or individual specified in the Order Form (**you**) the right to access and use the Software.

Clickwrap: By clicking the "accept" button at the bottom of these terms, you are indicating your acceptance of the terms of this Agreement and agreeing to be bound by them.

Paper form: By signing the Order Form, you are indicating your acceptance of the terms of this Agreement and agreeing to be bound by them

Agreed terms

1 Term

- (a) If you purchase a transaction based subscription (either for pre-employment or health management) the subscription will take effect from the date of signing and invoicing will be carried out at the end of each calendar month.
- (b) If you purchase a full subscription to the Software, this Agreement will take effect on the date that you sign and continue for the Initial Term unless terminated earlier in accordance with this Agreement. The subscription works one month in advance so upon signing of the subscription model, an invoice for the first month will be created on that date.
- (c) After the expiry of the Initial Term, this Agreement will continue until terminated by either party under **clause 9.1**.

2 The Software

2.1 Access and use of the Software

- (a) If you purchase a full subscription, transaction based or child, single sign on maintenance model to the Software, HRMS grants you a non-exclusive, non-transferable right to access and use the Software and Documentation for your own internal business purposes during the Term in accordance with this **clause 2.2**.
- (b) You may make a reasonable number of copies of the Documentation for your internal training purposes.
- (c) You may use the Software only for its intended purposes in accordance with the Documentation and any laws which apply to you.
- (d) Except as otherwise permitted by this Agreement and by law, you must not copy, modify, merge, combine with any other products, reverse engineer or decompile the whole or any part of the Software, without HRMS's prior written consent.

2.2 Named Users

- (a) You may permit your employees and individual contractors to access and use the Software, up to the maximum number of Named Users specified on the Order Form (unless the number of Named Users is deemed to be 'unlimited').
- (b) Each individual who you permit to access the Software will count as a Named User, even if not all of your Named Users use the Software concurrently. Each individual must be a separate Named User and a Named User cannot be shared by more than one individual. You may only reassign a Named User if the former Named User no longer uses the Software at all.
- (c) Additional Named Users may be added during the Term at HRMS's then-current pricing (calculated on a pro-rata basis for the remainder of the then-current Term) unless the number of Named Users on the Order Form is specified as unlimited.

- (d) You must ensure your Named Users use the Software in accordance with this Agreement.

2.3 Security of the Software

HRMS will use commercially reasonable efforts to keep the Software both physically and electronically secure in line with industry standards. The Software is hosted in a dedicated data centre and is backed up daily to a secondary site.

2.4 Support

HRMS will provide a support centre contactable by email or telephone to answer general queries from your Named Users about the Software and provide assistance to your Named Users with the use of the Software. The support centre will operate from 8.00am to 5.00pm Victoria local time on Business Days. The support centre is not a training service and you must ensure that your Named Users are reasonably competent in the use of the Software before contacting the support centre.

2.5 Maintenance

- (a) HRMS will use commercially reasonable efforts to ensure the Software remains available at all times, excluding scheduled downtime or emergency maintenance. HRMS will give you at least 8 hours notice of scheduled downtime and will use reasonable efforts to conduct scheduled downtime and emergency maintenance between 6pm Friday and 3am Monday, Victorian local time.
- (b) HRMS will use commercially reasonable efforts to ensure the Software functions in accordance with the Documentation. Any problems should be promptly reported to the support centre.
- (c) Downtime, in reference to maintenance and scheduled downtime does not include "user error", quality of the data or accuracy of the data, which remains your responsibility.

2.6 Updates

HRMS may update the functionality of the Software from time to time, provided that it will not make any changes which would have a material adverse impact on your use of the Software. HRMS will update the Documentation to reflect any update.

3 Your responsibilities

3.1 Security

- (a) HRMS will issue login and passwords (**Security Codes**) to your nominated administrator. Your administrator will be responsible for allocating Named User accounts and issuing Security Codes. You must use commercially reasonable efforts to ensure that your administrator and Named Users keep the Security Codes secure. You are responsible for any use of the Software which occurs through use of Security Codes issued to your Named Users. You must notify HRMS promptly if you become aware of any unauthorised access or use of your Security Codes.
- (b) You must not interfere with or disrupt the integrity or performance of the Software or attempt to gain unauthorised access to the Software or the systems or networks on which the Software is hosted.

- (c) The definition of software is limited to an object code of the software solution and not source code.

3.2 Data

You are solely responsible for the accuracy and quality of the Data. HRMS will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Data. HRMS will not:

- (a) modify the Data; or
- (b) access or disclose the Data except: (i) as necessary to host and allow you to use the Software; (ii) as required by law; or (iii) with your written consent.

3.3 Personal Information

If the Data contains Personal Information, you must:

- (a) comply with all applicable Commonwealth and State privacy laws;
- (b) comply with the Australian Privacy Principles when collecting the Personal Information (whether or not the Australian Privacy Principles otherwise apply to you); and
- (c) do all things necessary to ensure that HRMS is entitled under applicable law to store the Personal Information for the purpose of providing you with access to the Software.

3.4 Privacy

HRMS handles Personal Information in accordance with its privacy policy a copy of which is available at www.myworkplacehealth.com.au

3.5 No resale etc of Software

You must not permit any person to access or use the Software other than the Named Users. You must not sell, resell, rent or lease access to or use of the Software to any person.

4 Fees and payment

- (a) The Initial Subscription Fees are payable by credit card, direct debit or invoiced when you purchase your subscription.
- (b) The Ongoing Subscription Fees will be invoiced monthly in advance by HRMS after expiry of the Initial Term. HRMS may vary its standard Ongoing Subscription Fees at any time.
- (c) In this **clause 4(c)**, words and expressions which are not defined in this Agreement but which are defined in the GST Law have the same meaning as in the GST Law. All amounts under this agreement are exclusive of GST. If GST is imposed on any taxable supply, the recipient will pay to the supplier an amount equal to the GST payable on the supply. The recipient will pay this amount in addition to and at the same time that the consideration for the supply is to be provided under this Agreement to obtain a valid tax invoice the recipient must provide the supplier with its ABN.

5 Intellectual Property Rights

- (a) You acknowledge that, as between the parties, all rights (including Intellectual Property Rights) in the Software and the Documentation are owned by HRMS. Except as otherwise permitted by this Agreement and by law, you must not use, copy, modify, merge, combine with any other products, reverse engineer or decompile the whole or any part of the Software or the Documentation, without HRMS's prior written consent.
- (b) Nothing in this Agreement affects your rights in the Data. You grant HRMS a royalty-free licence to reproduce, adapt and communicate the Data as necessary to provide the Software under this Agreement.

6 Warranties

- (a) Each party represents and warrants that it has the legal power to enter into this Agreement.

- (b) HRMS warrants that the Software will comply with the Documentation in all material respects during the Term.
- (c) You warrant that you have the right to grant HRMS the licence under **clause 5(b)**.
- (d) To the extent permitted by law, subject to **clause 6(e)**, no term, condition, guarantee or warranty is given in or in connection with this Agreement except as expressly stated in this Agreement and all implied terms, conditions and warranties (whether statutory or otherwise) are excluded, including all implied terms, conditions, guarantees and warranties (whether statutory or otherwise) as to the condition, quality, purpose, use or performance of the Software or the Documentation. Without limiting the previous sentence, you acknowledge that subject to **clause 6(e)**, HRMS makes no representations and gives no warranties that your use of the Software or the Documentation will not infringe any laws or regulations or the rights of any person.
- (e) If the *Australian Consumer Law* or any other legislation implies into these terms and conditions any term, condition or warranty which cannot be negated, varied, waived, excluded, restricted or modified then such term, condition or warranty shall remain herein but only to the extent that it cannot be so negated, varied, waived, excluded, restricted or modified.
- (f) If there is a breach of any term, condition or warranty referred to in **clause 6(e)**, then HRMS's liability shall be limited where permitted under the *Australian Consumer Law* or the other legislation, as the case may be, at HRMS's option, to: (i) in respect of goods: replacement of the goods, the payment of the cost of replacing the goods, the repair of the goods or the payment of the cost of having the goods repaired; or (ii) in respect of services: the resupply of the services or the payment of the cost of having the services resupplied.

7 Limitation of liability

Notwithstanding any other provision of this Agreement and except to the extent liability cannot be limited or excluded:

- (a) the aggregate liability (including for negligence or any other cause of action) of HRMS for any loss, damage, expense or liability incurred by you under this Agreement will be capped at the total amount of the Subscription Fees paid by you under this Agreement in the 12 months preceding the first such claim, provided that such cap will not apply to any claim, action or demand relating to physical property damage or personal injury or death; and
- (b) under no circumstances will either party be liable for any economic loss, loss of revenue or profits, loss of goodwill, loss of contract, loss or corruption of information or data, interruption of business, loss of production, or indirect, incidental, special or consequential damages with respect to the subject matter of this Agreement, regardless of whether such damages or losses could have been foreseen or prevented by either party.

8 Indemnities

8.1 HRMS indemnity

- (a) HRMS will at all times indemnify, hold harmless and defend you from and against any claim, action or demand made against you by a third party (**third party claim**) alleging that your use of the Software in accordance with this Agreement infringes that party's rights (including Intellectual Property Rights).
- (b) HRMS's liability to indemnify you under this **clause 8.1** will be reduced proportionally to the extent that any third party claim is contributed to by: (i) your modification of any part of the Software; (ii) your use of the Software in combination with any other hardware or software, where the infringement arises from such combination; (iii) your use of the Software other than in accordance with this

Agreement or other breach of this Agreement by you; or (iv) your or your Associates' illegal or negligent acts or omissions.

- (c) You must give HRMS prompt notice of any third party claim. HRMS will have the right to control the defence and/or settlement of any third party claim and you must provide reasonable assistance, at HRMS's expense, in connection with such defence and/or settlement. You must not make any public statement which prejudices the defence of and/or settlement of any third party claim.
- (d) If HRMS considers that the Software may infringe a party's rights (including Intellectual Property Rights), HRMS may: (i) modify the Software so that it is no longer infringing; (ii) procure the right for you to continue using the Software for the Term; or (iii) immediately terminate this Agreement and provide you with a refund of the portion of any Subscription Fees paid in advance (calculated on a pro-rata basis) which relate to the period after such termination.
- (e) This **clause 8.1** sets out your sole and exclusive remedy in relation to the Software infringing any person's rights.

8.2 Customer indemnity

- (a) You will at all times indemnify, hold harmless and defend HRMS from and against any claim, action or demand made against HRMS by a third party (**third party claim**) alleging that HRMS's processing and storage of the Data in accordance with this Agreement infringes that party's rights (including Intellectual Property Rights) or contravenes any applicable law.
- (b) You will at all times indemnify HRMS for any breaches of the terms by third parties using the software at your request (whether authorised or no).
- (c) Your liability to indemnify HRMS under this **clause 8.2** will be reduced proportionally to the extent that any third party claim is contributed to by: (i) HRMS's processing and storage of the Data other than in accordance with this Agreement or other breach of this Agreement by HRMS; or (ii) HRMS's or its Associates' illegal or negligent acts or omissions.

9 Termination

9.1 Termination for convenience

- (a) HRMS may terminate this Agreement at any time after the expiry of the Initial Term by providing written notice in accordance with clause 9.1(b) or 9.1(c) to you and providing you with a refund of the portion of any Subscription Fees paid in advance (calculated on a pro-rata basis) which relate to the period after such termination.
- (b) Where the Initial Term is 4 months or less, at least 30 days written notice must be provided.
- (c) Where the Initial Term is more than 4 months, at least 60 days written notice must be provided.
- (d) You may terminate this Agreement at any time after the expiry of the Initial Term by providing written notice of such termination to HRMS in accordance with clause 9.1(b) or 9.1(c).

9.2 Termination for cause

Either party may terminate this Agreement immediately by notice in writing to the other party if the other party:

- (a) breaches **clauses 10** of this Agreement;
- (b) breaches any term of this Agreement that is not capable of remedy;
- (c) breaches any term of this Agreement that is capable of remedy and fails to remedy that breach within 14 days of receipt of a notice from the first party requiring it to do so; or

- (d) enters into, or threatens or proposes to enter into, or is in jeopardy of becoming subject to, any form of insolvency administration (whether voluntary or not and whether formal or informal).

9.3 Action upon termination

Upon termination or expiry of this Agreement for any reason:

- (a) you must immediately cease accessing and using the Software;
- (b) you must immediately pay any outstanding amounts owing to HRMS under this Agreement, whether or not those amounts have been invoiced;
- (c) if the Agreement was terminated by you under **clause 9.2**, HRMS will provide you with a refund of the portion of any Subscription Fees paid in advance (calculated on a pro-rata basis) which relate to the period after such termination;
- (d) each party must immediately return to the other party any of the other party's Confidential Information in its possession or within its control, or in the possession or control of any of its Associates (unless retention of that Confidential Information is necessary for any current or anticipated legal action under or in relation to this Agreement);
- (e) upon request by you made within 30 days after the effective date of termination, HRMS will make available for download a file of the Data in comma separated value format (and after this period, HRMS may delete all of the Data from its systems);
- (f) except as otherwise provided in this Agreement and except for any rights or obligations which have accrued prior to termination or which by their nature extend beyond termination, upon termination neither party has any further obligation to the other under this Agreement; and
- (g) **clauses 7, 8, 9.3, 10, 13(h) and 13(k)** of this Agreement will survive such termination or expiry and continue in effect.

10 Confidential Information

- (a) Each party must keep the Confidential Information of the other party confidential and must not: (i) use or permit the use of that Confidential Information other than for the purposes of this Agreement; (ii) make copies of that Confidential Information other than for the purposes of this Agreement; or (iii) disclose that Confidential Information to any person, except with the other party's prior written consent.
- (b) Nothing in this **clause 10** will prevent a party from disclosing the Confidential Information of the other party to those of its Associates who need to know the Confidential Information to perform the first party's obligations under this Agreement, provided that the first party ensures that each such Associate is bound by an appropriate obligation of confidentiality.
- (c) A party will not breach its obligations under this **clause 10** solely because it discloses Confidential Information of the other party that it is legally required to disclose. However, Confidential Information that is disclosed by force of law will remain Confidential Information for all other purposes.
- (d) If a party is uncertain as to whether any information is Confidential Information of the other party, the party must treat that information as Confidential Information unless the other party expressly notifies it to the contrary.
- (e) Each party must maintain effective security measures to protect all Confidential Information of the other party in its or its Associates' possession or control from unauthorised access, use, copying or disclosure.
- (f) A party must, on demand, return to the other party any of the other party's Confidential Information in its possession or within its control, or in the possession or control of any

of its Associates (unless retention of that Confidential Information is necessary for any current or anticipated legal action under or in relation to this Agreement).

- (g) The terms of this Agreement will be the Confidential Information of both parties. After execution of this Agreement, the parties will agree the wording of a media release publicising the entry by the parties into this Agreement.
- (h) This **clause 10** and all its subclauses will survive the termination of this Agreement.

11 Force Majeure

A party will not be liable for any delay or failure to perform its obligations under this Agreement if such delay is due to Force Majeure. If a delay or failure of a party to perform its obligations is caused by Force Majeure, the performance of that party's obligations will be suspended while the Force Majeure continues.

12 Subcontracting

HRMS may use the services of a third party subcontractor to assist it in performing its obligations under this Agreement on condition that HRMS will remain responsible for the performance of its obligations under this Agreement.

13 General

- (a) Nothing in this Agreement will be deemed to limit or restrict either party from entering into similar agreements with any other person or from offering services similar to any services provided under this Agreement.
- (b) This Agreement may only be varied or replaced by a document executed by the parties.
- (c) A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right. A party is not liable for any loss, cost or expense of the other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- (d) Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.
- (e) Except as expressly stated otherwise in this Agreement, a party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.
- (f) Each party must promptly do whatever the other party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.
- (g) If any provision or term of this Agreement, not being of a fundamental nature, is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of this Agreement will not be affected.
- (h) This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria, Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (i) Neither party may assign, sub-license or sub-contract its rights or obligations under this Agreement to a third party without the prior written consent of the other party. Any purported dealing in breach of this clause is of no effect.
- (j) This Agreement contains the entire understanding between the parties as to the subject matter of this Agreement. All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of

no effect. Neither party is liable to the other party in respect of those matters.

- (k) This Agreement is between you and HRMS and you agree that any cause of action under or in relation to this Agreement must be brought by you against HRMS and not 2cRisk. You further acknowledge that this Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

14 Interpretation

14.1 Definitions

2cRisk means 2cRisk Pty Ltd ABN 19 145 191 546.

Agreement means the terms and conditions set out in this document and the schedules to this document.

Associates in relation to a party, means the employees, officers, agents and contractors of that party.

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

Australian Privacy Principles means the Australian Privacy Principles specified in the *Privacy Act 1988* (Cth).

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Victoria.

Confidential Information means information obtained by a party or its Associates (the **recipient**) which relates to the other party or its Related Bodies Corporate or their respective businesses that:

- (a) is by its nature confidential;
- (b) is designated as confidential; or
- (c) the recipient knows or ought reasonably to have known is confidential,

but does not include information which:

- (d) is or becomes publicly available through no fault or breach on the part of the recipient;
- (e) the recipient legitimately has in its possession prior to disclosure to the recipient by the other party;
- (f) is independently developed by the recipient without the use of any of the other party's Confidential Information; or
- (g) the recipient rightfully obtains from a third party who has the right to transfer or disclose it.

Consumer has the meaning given in section 3 of the Australian Consumer Law.

Data means any data you enter into the Software.

Documentation means any user documentation for the Software provided by HRMS to you.

Force Majeure means any communications disruption, fire, lightning strike, flood, earthquake, natural disaster, sabotage, nuclear contamination, terrorism, war or civil riot or other event beyond the reasonable control of the affected party to the extent that it results in the affected party being unable to perform an obligation under this Agreement on time.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any regulation made pursuant to that Act.

Initial Subscription Fees means the fees for the subscription to the Software for the Initial Term as set out on the Order Form.

Initial Term means a period of 3 months from the date that you pay the Initial Subscription Fees in full or such longer period specified in the Order Form.

Intellectual Property Rights means copyright (including future copyright), trade mark, design, patent, circuit layout rights and all other rights generally falling within the scope of this term, whether registered or unregistered and whether registrable or not.

Licensed Site means each premises from which Named Users are permitted by you to access and use the Software.

Named User means each employee or independent contractor permitted by you to access and use the Software.

Ongoing Subscription Fees means the monthly fees to continue the subscription to the Software after the Initial Term as set out in the invoices issued by HRMS.

Personal Information has the meaning given to that term in the *Privacy Act 1988* (Cth).

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Software means the current version from time to time of the edition specified in the Order Form of the software service known as the "2cRisk Health Risk Management Software", as further described on the Website and includes any updates to the Software made by HRMS from time to time.

Subscription Fees means the Initial Subscription Fees and any Ongoing Subscription Fees.

Term means period commencing at the beginning of the Trial Period (if applicable) or the Initial Term and ending upon termination of this Agreement.

Trial Period means a period commencing on the date that you accept this Agreement and ending:

- (a) 30 days after the date that you accept this Agreement; or
- (b) on the date you pay the Initial Subscription Fees in full, whichever occurs sooner.

Website means the website at <https://2cRisk.net> (or such other URL as specified by HRMS).

14.2 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (c) includes means includes without limitation;
- (d) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (e) a reference to: (i) a person includes a partnership, a joint venture, an unincorporated association, a corporation and a government or statutory body or authority; (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation; (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; (iv) time is to local time in Victoria; (v) \$ or dollars is a reference to Australian currency; and (vi) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
- (f) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (g) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

14.3 Headings

Headings do not affect the interpretation of this Agreement.

