

# AssessNET SaaS Software: Health & Safety Management System Standard Terms and Conditions

## BETWEEN

1. Riskex Limited, registered in England and Wales with company registration number 05174302 whose registered office is at 15 Sheep Lane, Woburn, Milton Keynes MK17 9HD ('Riskex') and
2. The Customer ["The Customer"].

## WHEREAS

- A) Riskex are to supply Cloud-based, modular, electronic health and safety management Software as a Service on a licence subscription model and undertake development to the same. Whenever developments are made to the application the improvements are to be made available to the Customer. Riskex are to provide appropriate security and business continuity as an integral component of their service.
- B) The Customer has agreed to licence the use of modules that comprise the application as outlined in the quotation provided and approved, subject to the Standard Terms and Conditions of this Agreement including the Service Level Agreement.
- C) Special terms for Freemium SME Risk Assessment Tool: see [Appendix 1](#)

**IT IS AGREED** as follows:

## **RISKEX STANDARD TERMS AND CONDITIONS**

The parties agree to the terms set out below.

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

- 1.1.1 In this Agreement unless the context requires otherwise:
- 1.1.2 “AssessNET”, “Services” means the service and supporting apps, portal and services used in the day-to-day management of Health and Safety data by the Customer.
- 1.1.3 “Customer” means the party (including any employee, contractor, or agent) that performs actions within AssessNET under this Agreement.
- 1.1.4 “Charges” means those charges payable by the Customer to Riskex set out in the Subscription as may be varied from time to time pursuant to the terms hereof.
- 1.1.5 “Confidential Information” means all information which is identified or treated by either party as confidential or which, by reason of its characteristics or the circumstances or manner of its disclosure is evidently confidential including (without prejudice to the foregoing generality) any information about business plans/proposals relating to the acquisition or disposal of a company or business or proposed expansion or contraction of activities, maturing new business opportunities, research and development projects, designs, secret processes, product or services development and formulae, know how, inventions, sales statistics and forecasts, marketing strategies and plans, costs project and loss and other financial information (save to the extent published in audited accounts) prices and discount structures.
- 1.1.6 “Contract Start Date” means the licence subscription commencement date on the Riskex Order Form for AssessNET.
- 1.1.7 “Copyright” means copyright, design rights topography rights and database rights whether registered or unregistered (including any applications for registration of any such right) and any similar or analogous rights to any of the foregoing whether arising or granted under the law or any other jurisdiction.
- 1.1.8 “Customer Data” means all data and records of the Customer maintained on Riskex’s Server using the Software Applications.
- 1.1.9 “Customer Deliverables” means the services and materials (if any) to be provided by the Customer to enable Riskex to perform its obligations hereunder and as may be varied from time to time during the Agreement by agreement between the Customer and Riskex;
- 1.1.10 “Customer Representatives” means personnel nominated by the Customer and notified to Riskex who will provide points of contact from the Customer to Riskex.
- 1.1.11 “Data Centre” means the physical facility in which Riskex houses the Hardware required to provide the Services to the Customer.
- 1.1.12 “User” means a main system user with access to one or more modules in AssessNET.
- 1.1.13 “DSE” User” means anyone with or without main systems access that is required to complete a DSE Assessment.

- 1.1.14 “Demarcation Point” means the point at which packets are handed off from Riskex to the Customer, and the Customer takes responsibility for quality of the Services. The Demarcation point is therefore the point at which Riskex’s Hardware is connected to the public telecommunications network.
- 1.1.15 “Internet” means the publicly accessible non-proprietary global data network comprising interconnecting networks using TCP/IP (Transmission Control Protocol/Internet Protocol);
- 1.1.16 “Force Majeure” means any cause preventing a party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including without limitation strikes, lock outs or other industrial disputes (save for those involving the workforce of the party so prevented) act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental rule, order, regulation or direction, power interruption or other incident causing general inaccessibility to Internet, fire, flood, or storm.
- 1.1.17 “Group” means a company, its holding company and ultimate holding company and each of its subsidiary companies and joint ventures and its holding company’s and ultimate holding company’s subsidiary companies and joint ventures from time to time, “holding company” and “subsidiary” having the meanings given to them in section 1159 of the Companies Act 2006.
- 1.1.18 “Hardware” means computers, telecommunications, and peripheral equipment.
- 1.1.19 “Intellectual Property Rights” means any and all intellectual property rights whether registered or not including patents rights and trademarks (and any applications therefore) copyright, design rights (whether registered or not) or any other intellectual property rights of a similar nature.
- 1.1.20 “Know How” means all knowledge, experience, data, technical or commercial or financial information, inventions and all other intellectual property rights which might reasonably be of a commercial interest to either party. This includes (without limitation) descriptions of manufacturing and other processes, recipes, formulae, drawings, specifications, plans, computer programs; relating to the design, development, manufacture, testing, use and supply of either party’s products;
- 1.1.21 “Personal Data” means Personal Data that Riskex process in the course of providing the Services under the Agreement.
- 1.1.22 “Program Documentation” means any operating manuals, user instructions, technical literature and all other related materials in eye-readable form supplied by Riskex to the Customer for aiding the use and application of the Software Applications.
- 1.1.23 “Riskex Order Form for AssessNET” means the order form that the Customer signs to link the order with these terms.
- 1.1.24 “Scheduled Downtime” is the time during which the Customer is not able to access the Services due to planned maintenance. Riskex may schedule system downtime as set out in clause 11.7.
- 1.1.25 “Service Level Agreement” means the service levels provided by Riskex to the Customer as outlined in the AssessNET Service Level Agreement in relation to the Services as described in the Subscription.
- 1.1.26 “Services” means those services, consisting primarily of access to and use of the Software

Applications and the provision of the Support Services to be provided by Riskex as detailed in the Subscription.

- 1.1.27 “Software Applications” means the computer software more particularly described in the Subscription as modified, extended, added to or replaced during the agreement.
- 1.1.28 “Subscription” means the agreement entered into between Riskex and the Customer as outlined in these terms and conditions, the service level agreement and the Riskex Order Form or System-generated Quotation for AssessNET and approved by the Customer for the provision of the Services and specified as such.
- 1.1.29 “Support Services” means the support services to be provided by Riskex to the Customer in relation to the Services as described in the Subscription.
- 1.1.30 “System-generated Quotation” means the digital quotation generated, sent and accepted via the Riskex CRM System, MyCus.
- 1.1.31 “Term” means the Initial Term (as defined in clause 2.1) and any subsequent extension of this agreement in accordance with the terms of this agreement.

## **1.2 Interpretation and Construction**

- 1.2.1 Save to the extent that the context or the express provisions of these Terms and Conditions require otherwise, in these Terms and Conditions: -
- (a) words importing the singular shall include the plural and vice versa.
  - (b) words importing any gender shall include all other genders.
  - (c) any reference to a Clause is to a clause of this Agreement.
- 1.2.2 references to these Terms and Conditions or to the Subscription or to any other document shall be construed as references to these Terms and Conditions or to the Subscription or to that other document as modified, amended, varied, supplemented, assigned, novated, or replaced from time to time.
- 1.2.3 references to any statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates, or replaces the same, or which has been amended, extended, consolidated, or replaced by the same, and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision.
- 1.2.4 references to a “person” includes any individual, firm, company, corporation, body corporate, government, state or agency of state, trust or foundation, or any association, partnership, or unincorporated body (whether or not having separate legal personality) of two or more foregoing.
- 1.2.5 any phrase introduced by the words “including”, “include”, “in particular” or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words.
- 1.2.6 any reference to a party to the Subscription includes that party’s permitted successors, transferees, and assignees.
- 1.2.7 a “month” is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that, if there is no numerically

corresponding day in the month in which that period ends, that period shall end on the last day in that calendar month.

1.2.8 the term “business day” means any day which is not a Saturday, a Sunday or a public holiday in the UK.

1.2.9 references to “property” include all forms of property, tangible and intangible.

### **1.3 Headings**

1.3.1 The headings in these Terms and Conditions are included for convenience only and shall be ignored in construing this Agreement.

## **2. TERM AND TERMINATION**

2.1.1 The Subscription will commence on the Contract Start Date and will continue for a period of 36 (thirty-six) calendar months (“Initial Term”). After expiry of the Initial Term, the Subscription shall continue in accordance with the provisions of clause 12 (Termination)”.

2.1.2 Riskex shall provide the Services to the Customer during the Term. Riskex shall use all reasonable skill and care in the delivery and performance of the Services and the software shall be of satisfactory quality, fit for purpose and comply with their descriptions asset out in the Subscription.

## **3. SECURITY ARRANGEMENTS**

### **3.1 Access Codes**

3.1.1 Riskex shall allocate access codes as requisite to enable the Designated Users to gain access to the Software Applications installed on Riskex’s Servers.

### **3.2 Anti-Virus and Malware Software**

3.2.1 Riskex shall maintain up to date anti-virus and malware protection on Riskex’s Hardware where applicable.

### **3.3 Security**

3.3.1 Riskex shall maintain multi-level security on Riskex’s Server including software and hardware-based firewall system and encrypted services.

3.3.2 Riskex shall use an approved vendor to carry out security testing on its network and web servers on a regular basis to ensure compliance with the PCI Council Data Security Standards (DSS) vulnerability scanning guidelines. Riskex will continue to maintain its 27001 accreditation and alert Customers in the event of any major non-conformance with an action plan to rectify.

3.3.3 Riskex shall ensure that its developers and testers undertake robust testing on code whilst conforming to best practice techniques such as OWASP during all development lifecycle.

## **4. DATA**

4.1.1 All the Customer Data held on the system is (as between Riskex and the Customer) the property of the Customer and the Customer owns all Intellectual Property Rights to the said data or otherwise

has the right to upload it to the system.

- 4.1.2 Riskex will not share the Customer Data or property of the Customer including and not limited to Confidential Information to any third party without full written consent of the Customer and the third-party as agreed by the customer.
- 4.1.3 Riskex shall configure its Software Applications and servers so that all connections to its servers are secure and all Customer Data is transmitted in encrypted form, the security of such connection and encryption to be in line with best industry standards.
- 4.1.4 Confidential Information will not be stored by Riskex once the data is not required by Riskex or the Customer provides retention information.
- 4.1.5 Connection to hosted applications by the Customer must be undertaken under a secure channel such as but not limited to SSL (Secure Socket Layer) 128bit minimum.
- 4.1.6 Riskex is registered with the ICO (Information Commissioner's Office) data protection register, registration number: Z9742245, and is committed to its obligations and adherence to all the requirements therein and in particular to make sure it has the right physical and technical security (backed up by robust policies and procedures and reliable, well-trained staff), sufficient to enable the Personal Data to be processed in compliance with obligations equivalent to those imposed on the Customer by the seventh principle of the Act; and be ready to respond to any breach of security swiftly and effectively in accordance with our ISO standards.
- 4.1.7 Each party agrees, in the performance of its respective obligations under these Terms and Conditions and in relation to the Subscription, to comply with the provisions of the Data Protection Act 2018 (in this clause 5, referred to as the Act) to the extent it applies to each of them. Where used in this clause 5, the expressions Process, Personal Data, Data Processor and Data Subject shall bear their respective meanings given in the Act.
- 4.1.8 Riskex is acting as a Data Processor and Riskex shall:
  - (a) process the Personal Data strictly in accordance with these Terms and Conditions and the Customer's instructions from time to time or unless otherwise required by law or any other regulatory body;
  - (b) not, and will ensure that its sub-contractors shall not, under any circumstances transfer the Personal Data outside the United Kingdom unless authorised in writing to do so by the Customer.
  - (c) allow its data processing facilities, procedures and documentation which relate to the processing of the Personal Data to be inspected (on reasonable written notice) by the Customer, a representative of the Customer or a regulatory body to ascertain compliance with these Terms and Conditions; and
  - (d) fully indemnify and keep the Customer indemnified against all claims, demands, actions, costs, expenses, losses and damages arising from or incurred by reason of any loss, damage or distress suffered by any person as a result of the loss, destruction or unauthorised disclosure of, or unauthorised access to, Personal Data by Riskex or its personnel or as a result of any failure to comply with the provisions of this clause 5.
- 4.1.9 For the purposes of this agreement, Riskex act as Data Processor and the Customer will act as Data Controller.

## **4.2 Compliance with GDPR Laws; Use Limitations**

- 4.2.1 Both Parties represent and warrant that they shall comply with all Data Protection Laws and the Applicable Standards, including any requirements that apply to cross-border transfers of Personal Data.
- 4.2.2 Riskex will Process Personal Data in line with this Data Processing Agreement and solely to exercise our rights and to fulfil our obligations under the Agreement. We are expressly prohibited from Processing Personal Data for any other purpose.
- 4.2.3 Riskex will provide a privacy notice to AssessNET users that complies with Data Protection Laws.
- 4.2.4 Each of the Parties will appoint a representative who will be the main point of contact for any issues arising under the Agreement (and in Your case, on behalf of any sub-processor).
  - a. Riskex current details are:
    - i. Contact Details: [dataprotectionofficer@riskex.co.uk](mailto:dataprotectionofficer@riskex.co.uk)
  - b. You will ensure that you supply in writing, to Riskex, the relevant representative details prior to the Data Processing Agreement Effective Date.
- 4.2.5 The Parties may change their representative at any time and shall provide the other party with the current details without delay.

### **4.3 Data Processor and Data Controller Obligations**

- 4.3.1 Riskex will only process data on behalf of and at the request of the Customer. All processing is completed through AssessNET, unless otherwise agreed with the Customer for backend processing, such as but not limited to, system integrations.
- 4.3.2 Riskex act on the behalf of the Customer when processing personal data. Data subjects fall into the following broad categories: System users, Assessment subjects, Incident Report subjects.
- 4.3.3 Riskex processes personal data for the purposes of user management, incident reporting, DSE assessments and training management records. Personal data processed by Riskex will be limited and made relevant for its purpose within the system. Personal data will not be shared outside of the records it was attached to, unless required by the Customer.
- 4.3.4 Personal data may include, but is not limited to, Name, Address, Age, Date of Birth, School Year, Occupation, Company, DSE concerns, Accident records, Training history.
- 4.3.5 All data subjects may, during the Customers contract for AssessNET, have their data processed by Riskex.
- 4.3.6 It is the obligation of the Customer to ensure that the information entered into and held in AssessNET is accurate, kept up to date and has been acquired lawfully.
- 4.3.7 Riskex will only process data on behalf of and at the request of the Customers' actions. These will be completed through AssessNET.
- 4.3.8 All Riskex employees are subject to a non-disclosure agreement as a requirement of their employment. Access to Customer personal data is limited according to their role. No external contractors or officials are permitted access to backend systems or personal data held by Riskex.
- 4.3.9 Riskex are fully compliant with the requirements of GDPR regarding security measures and the encryption of personal data. The Technical Operations Team regularly review and undertake privacy impact assessments for all projects when handling new instances of personal data in the system.

- 4.3.10 Riskex will assist the Customer with handling requests from data subjects. The Customer should raise a support ticket through the AssessNET interface to commence an access request.
- 4.3.11 Riskex have a complete data breach policy and procedure and will notify affected Customers and the ICO within 72 hours of a breach being identified. A full impact assessment has been completed on the existing services and will be reviewed, maintained, and amended with all future works which impact on personal data.
- 4.3.12 Upon contract termination, the Customer may request a copy of their data which will be provided in an agreed format and delivery method. On the termination date, or an agreed timeframe, all data will be deleted from our systems and associated backups.
- 4.3.13 Riskex will assist the Customer, where applicable, with any request to demonstrate compliance with the GDPR. Riskex undertake external accredited audits to demonstrate information security and process compliance. Access to certificates and audit reports are available upon request.
- 4.3.14 All data processing is undertaken by Riskex Ltd and is not delegated to third party sub-processors.

## **5. CUSTOMER DELIVERABLES**

- 5.1.1 The Customer shall provide or shall be responsible for procuring the provision of the Customer Deliverables from the Commencement Date throughout the Term.
- 5.1.2 The parties shall render each other such reasonable assistance as shall be necessary for them to carry out their obligations hereunder.

## **6. COMPATIBILITY OF HARDWARE AND SOFTWARE**

- 6.1.1 Riskex warrants that the Software Applications are (and will remain during the Term) compatible with Chrome, Edge, and Safari (including mobile/tablet versions) and similar modern browsers. Riskex will not be liable to the extent that problems with the use of the Software Applications are caused by the use of other browsers.

## **7. TERMS OF THE USE OF SOFTWARE APPLICATIONS**

- 7.1.1 The Customer shall be entitled to use the Software Applications for processing data for their normal business purposes only. It is recognised that Customers may be processing their Customer's data as well as their own and both parties will have ownership of their relevant data as is agreed between them.
- 7.1.2 Use of the Software Applications is restricted to the agreed number of Users and/or DSE Users as stated in the Subscription.
- 7.1.3 Use of the software Application is restricted to Users employed or contracted within the legal entity with which this contract is made and as specified in the Subscription.
- 7.1.4 The Customer acknowledges that it is permitted to use the Software Applications only in accordance with the express terms of this agreement and not further or otherwise.
- 7.1.5 The Customer may not make or attempt to make any copies of the Software Applications or any part of them. The Customer may not make any copies of any Program Documentation without the prior written consent of Riskex.



- 7.1.6 Any Program Documentation and all aspects of the Software Applications and the Intellectual Property Rights therein are and shall remain the property of Riskex.
- 7.1.7 The Customer shall notify Riskex as soon as reasonably practicable if the Customer becomes aware of any unauthorised use of the whole or any part of the Customer's instance of the Software Applications or any Program Documentation which was supplied to the Customer.
- 7.1.8 Riskex may periodically audit Customer compliance with the software license terms, specifically the User licence provision as set out in the Subscription. If an audit reveals that there are more Users in the System than covered in the Subscription, the Customer will pay Riskex for such underpayment, at the prevailing User license costs.

## **8. PRICES AND PAYMENT**

- 8.1.1 In consideration of Riskex providing the Services the Customer shall pay to Riskex the Charges in the manner and at the times set out in the Subscription. All sums payable under this agreement are exclusive of VAT and other sales tax which shall be payable by the Customer in addition.
- 8.1.2 At the start of each renewal period, the annual fees will be reviewed subject to the following conditions: (i) If the prior charges were subject to discount from our standard fees, such discount will not apply to any subsequent periods of service. User license fees and charges will revert to our standard list price as is current at the time. (ii) Should the number of Users covered by this contract increase, Riskex reserves the right to review the Annual fee in line with our standard pricing. (iii) If no such discount or User number increase applies per items (i) and (ii) above then an automatic 7% increase will apply to the annual fees at the start of the renewal term.

## **9. INTELLECTUAL PROPERTY RIGHTS AND LIMITATION OF LIABILITY**

### **9.1 Intellectual Property Rights**

- 9.1.1 Riskex shall not do anything in its activities under this Agreement or related thereto, or include anything within the Software Applications, Program Documentation and/or Services, which may infringe any Intellectual Property Right owned by any third party. Riskex agrees to indemnify and save harmless and defend at its own expense the Customer and its affiliates from and against any and all claims of infringement of any Intellectual Property Rights arising out of Riskex's activities under this Agreement or a claim that use of the Software Applications or Program Documentation in accordance with this Agreement and/or receipt of the Services infringes the Intellectual Property Rights or other rights of any third party.

### **9.2 Limitation**

- 9.2.1 Subject to the paragraph below and except in respect of injury to or death of any person and subject to the express terms hereof the liability of Riskex to the Customer for loss or damage arising out of or in connection with any breach of Riskex's obligations hereunder (express or implied) in aggregate shall not exceed the total sum of the payments due under this agreement.
- 9.2.2 Nothing in these Terms and Conditions shall limit or exclude either party's liability under any indemnity or for breach of clauses 4 or 12.5.

### **9.3 No Indirect Loss**

9.3.1 Subject to the express terms of this Agreement neither the Customer nor Riskex shall be liable to the other in connection with the exercise of its rights or the performance of its obligations hereunder for damages resulting from any indirect or consequential loss whether arising from negligence, breach of contract or otherwise.

### **9.4 Errors**

9.4.1 The Customer acknowledges that the Software Applications cannot be guaranteed to be error free but will be free of material defects, viruses and malicious code and agrees that the existence of such errors shall not constitute a breach of this Agreement provided Riskex remedies the issue at its cost promptly upon being aware of them and in any event in line with the Service Level Agreement.

### **9.5 Acknowledgement**

9.5.1 The Customer acknowledges that the Software Applications provide templates and guidance only. Riskex warrants that any guidance given as to the completion of accident reporting using the Software Applications and the completion of RIDDOR forms will be accurate, complete and not misleading. Riskex further warrants that any link provided to access RIDDOR forms (for any part of the UK including Northern Ireland) will be to the most current and up to date version of the RIDDOR form in a form which is complete and without error and which can be completed and submitted online to the HSE or relevant local authority. Save for in respect of the preceding, the Customer is solely responsible for adapting templates and interpreting guidance for use in the Customer's own business environment and that Riskex shall have no responsibility in that regard. In particular the Customer shall remain solely responsible for its own compliance with all applicable health and safety and other legislation to the exclusion of Riskex.

## **10. SERVICE LEVELS**

10.1.1 Riskex shall provide support for the Services in accordance with the Service Level Agreement.

10.1.2 In the event that a defect, fault or impairment in the provision of the Service(s) causes a service interruption and Riskex becomes aware of this either through the Customer giving notification to Riskex of such default, fault or impairment, or as a result of Riskex's monitoring, then Riskex shall resolve that defect, fault or impairment as soon as reasonably practicable and in any case in accordance with the Service Level Agreement.

10.1.3 If a defect, fault, or impairment results directly from: (i) the negligence or default of the Customer,

10.1.4 (ii) the Customer's breach of this Agreement, or (iii) the operation, failure or malfunction of any network, equipment, hardware or software owned or controlled by the Customer or (iv) any negligence or misuse by any person given access to the Service by the Customer, then Riskex may recover from the Customer all reasonable costs to be incurred by it or on its behalf in connection with the remedy of such defect, fault or impairment.

10.1.5 Riskex will monitor the availability of all Services provided under this Agreement as described in the Service Level Agreement, from the Data Centre to and including the agreed Demarcation Point and provides the availability guarantee set out in the Service Level Agreement. If the Customer accesses the Services through the public Internet or through a private circuit provisioned by a bandwidth provider of the Customer's choice the Customer assumes responsibility for managing the relationship with this chosen provider, including service level commitments for issues found to

be in the chosen provider's network.

- 10.1.6 The Customer accepts responsibility for monitoring and maintaining all system components from the Demarcation Point to the user desktop. Security, acquisition, support and maintenance of the Customer's Local Area Network and all network equipment and connections, printers and all software and other hardware operating on this equipment are the responsibility of the Customer. This includes responsibility for correct configuration and maintenance of the desktop environment used by the users to access the Services, and the Customer network router and firewall to allow data to flow between the Customer system and Riskex's server in a secure manner.
- 10.1.7 As the Customer becomes aware of an interruption to the Service, then the Customer is required to advise Riskex's Help Desk between the hours of 9 am and 5 pm on a business day.
- 10.1.8 Riskex may allocate periods when the Customer is not able to access the Services due to planned maintenance. These periods of Scheduled Downtime will take place out of hours and do not normally exceed 2 continuous hours and Riskex will use all reasonable endeavours to ensure they do not exceed this period. The Customer will be notified in advance of any Scheduled Downtime. In exceptional circumstances if a security threat or a major issue is identified, and the service must be interrupted the customer will be provided with as much notification as is practicable.
- 10.1.9 Riskex shall not be liable to the Customer for any period during which the Software Applications are inaccessible due to internet or network infrastructure failure or for any other reason outside Riskex's control.

## **11. TERMINATION**

### **11.1 Notice**

- 11.1.1 This agreement shall continue for the initial Term and, thereafter, this Agreement shall be automatically renewed for 12 months, from the contract start date at the bottom of this contract, unless either party notifies the other party of termination by either party giving no less than 90 days prior written notice to expire on the first or any subsequent anniversary of the commencement of the Term.

### **11.2 Default**

- 11.2.1 The Subscription may be terminated by a party forthwith by notice in writing if the other party commits a material or persistent breach of the Subscription or this Agreement, which in the case of a breach which is capable of remedy shall not have been remedied within four weeks of the receipt of a notice from the other party identifying the breach and requiring its remedy.

### **11.3 Insolvency and Force Majeure**

- 11.3.1 The Subscription may be terminated at any time immediately on written notice by either party in any of the following circumstances:
  - (i) If the other shall present a petition or have a petition presented by a creditor for its winding up, or shall convene a meeting to pass a resolution for voluntary winding up, or shall enter into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation) shall call a meeting of its creditors with the intention of restructuring its debts, or shall have a receiver of all or any of its undertakings or assets appointed, or shall be unable to pay its debts.
  - (ii) if performance is suspended due to an Event of Force Majeure for more than four weeks.

## **12. CONSEQUENCES OF TERMINATION**

12.1.1 Upon termination of the Subscription for any reason: -

### **12.2 Payments**

12.2.1 The Customer shall remain due to pay to Riskex any sums which have accrued, or which subsequently accrue, due hereunder and shall not be entitled to reimbursement of any such sums paid or any proportions thereof unless Riskex commits a material or persistent breach of the subscription as outlined in 11.2 or terminated due to clause 11.3.

### **12.3 Return of Property**

12.3.1 The Customer and Riskex shall return to each other any property of the other in its possession or under its control.

### **12.4 Return of Data**

12.4.1 Upon termination of this agreement the Customer may request a copy of all reports held on AssessNET by giving notice to Riskex. Riskex shall, within one month of receipt of the request by the Customer, copy onto a secure transfer service exported data from the database and provide limited time credentials to retrieve their data.

12.4.2 The fee appropriate to this service will be at Riskex's then current list price for support work per day for the duration of the works required at the time. The fees will be subject to a minimum charge at the prevailing minimum charge rate. Payment will be required for this service prior to data being dispatched to the customer.

### **12.5 Confidential Information and Return of Information**

12.5.1 The parties hereby undertake to treat as strictly confidential, even after the Subscription has terminated, each other's trade secrets and Confidential Information. The parties shall ensure that their officers and employees will not, whether during the period of this agreement or after the termination of this Agreement, use or disclose to any person any information relating to the other party, or any of the parties affiliates or their products, affairs or business, save where such information is already in the public domain other than as a result of a breach of this Agreement or where it is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required). On termination (or earlier if it is no longer required) the Customer and Riskex shall return to each other any documentation containing know-how, Confidential Information or other technical documentation or information provided to each other during the course of this Agreement.

### **12.6 Survival**

12.6.1 This Clause 12 shall survive the termination of the Subscription.

### **12.7 Accrued Rights**

12.7.1 Termination of the Subscription shall not affect any rights or obligations of either party which have accrued prior to the date of termination and all provisions which are expressed to or by implication survive the termination of the Subscription shall remain in full force and effect.

## **13. INDEMNITY**

### **13.1 Escrow agreement**

13.1.1 Riskex can offer an Escrow agreement in respect its Software Applications. Escrow attracts a fee which will be charged at prevailing rates.

### **13.2 Notification**

13.2.1 Any indemnity set out in these Terms and Conditions shall not apply unless the party claiming indemnification notifies (in writing) the other promptly of any matters in respect of which it may seek to rely on the indemnity and of which the notifying party has knowledge and gives the other party full opportunity to control the response to and the defence of such claim, , save that it shall not have the right to accept or reject settlement offers without the written consent of the party relying on the indemnity, and provided that in no event shall the Indemnitor be liable for any settlement or compromise made without its consent, such consent not to be unreasonably withheld or delayed.

## **14. AMENDMENTS, WAIVERS AND REMEDIES**

### **14.1 Amendments**

14.1.1 No amendment or variation of the Subscription or any of the documents referred to in it (other than this agreement) shall be effective unless it is in writing or agreed via electronic medium such as e-mail.

14.1.2 Riskex reserves the right to make amendments to this agreement as we keep pace with regulatory change and manage the further development of AssessNET's capabilities.

## **15. WAIVERS AND REMEDIES CUMULATIVE**

15.1.1 The rights of each party under the Subscription:

(a) may be exercised as often as necessary; (b) are cumulative and not exclusive of its rights under the general law; and (c) may be waived only in writing and specifically.

15.1.2 Delay in exercising or non-exercise of any right is not a waiver of that right.

## **16. ENTIRE AGREEMENT**

16.1.1 The Subscription (including these Terms and Condition and the Service Level Agreement), and the documents referred to in it, constitute the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of the Subscription.

16.1.2 Each of the parties acknowledges and agrees that in entering into the Subscription, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) of any person (whether a party to the Subscription or not) other than as expressly set out in the Subscription. Nothing in this Clause shall, however, operate to limit or exclude any liability for fraud.

16.1.3 The Customer accepts these terms by, i) signing them (by hand or electronically) or the Riskex Order Form for AssessNET, or ii) accepting the system-generated Quotation or iii) using the service, or allowing others to do so, or iv) making any payment for the service.

## **17. NO PARTNERSHIP OR AGENCY**

17.1.1 Nothing in the Subscription is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other, and either party shall not have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **18. ASSIGNMENT**

18.1.1 Neither party shall without the prior written consent of the other party (such consent not to be unreasonably conditioned, withheld or delayed) assign or, transfer or charge or deal in any other manner with either the benefit or the burden of the Subscription or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under the Subscription, other than assignment to any successor practice of the Customer.

## **19. ANNOUNCEMENTS**

19.1.1 The Customer authorises Riskex to make reference to the Customer in relation to Riskex's marketing activities.

## **20. GOVERNING LAW AND JURISDICTION**

### **20.1 Governing Law**

20.1.1 The Subscription and these Terms and Conditions (including any associated non-contractual disputes or claims) shall be governed and construed in accordance with the laws of England and Wales and the parties hereby accept the exclusive jurisdiction of the English courts in relation to any dispute arising under or in connection with the Subscription or these Terms and Conditions.

## **21. COMPLIANCE WITH LAWS AND REGULATIONS**

21.1.1 The parties agree to comply with all applicable laws and regulations including the laws and regulations relating to data protection.

## **22. SEVERANCE**

22.1.1 If any provision of the Subscription is or becomes illegal, invalid or unenforceable in any jurisdiction that shall not affect:

(a) the legality, validity or enforceability in that jurisdiction of any other provision of the Subscription;  
or

(b) the legality, validity or enforceability in any other jurisdiction of that or any other provision of the Subscription.

## **23. RIGHTS OF THIRD PARTIES**

23.1.1 Except as provided in this clause 25, no provision of the Subscription or these Terms and Conditions shall be enforceable by any person who is not a party to it whether by virtue of the Contracts (Rights of Third Party) Act 1999 or otherwise.

IN WITNESS WHEREOF, the parties hereto, through their duly authorised officers, have read, understood and agree to these Terms and Conditions as of the date written below.

<[Customer]>

Riskex Ltd

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

Title:

Title:

Date

Date: