

The Service, including the Revelian System, is owned and operated by Revelian Pty Ltd (ABN 58 089 022 202) registered at 1/21 Windorah St, Stafford QLD 4053. (All capitalised words are defined in clause 1 below.)

These Terms and Conditions, the Revelian Acceptable Use Policy and the Privacy Policy (together, the "Agreement") set out the terms on which Revelian agrees to provide the Service to You and conditions under which You may use the Services. By placing an Order with us, you agree that you have read and agree to be bound by the Agreement. We can change these terms and conditions in accordance with clause 23. We will give You notice of any change by email or We will post the changes on the Website. Any changes made by Us to these terms and conditions will not apply to disputes of which We had actual notice at the date the changes are made.

Your attention is drawn in particular to clauses 18 to 20, which set out the extent of Our liability to You.

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## **1 Definitions and interpretation**

### **1.1 Definitions**

In this Agreement, the following expressions have the following meanings:

- (a) **Brand Features** means the copyright, trademarks, domain names, patents and confidential information of Revelian.
- (b) **Business Day** means a day that is not a Saturday, Sunday or any other day, which is a public holiday in Brisbane, Queensland, Australia.
- (c) **Account Details** means the details You provided to register for the Service to access your account.
- (d) **Client** means an individual who for their own purposes or on behalf of an organisation, procures Assessments from Revelian on a paid basis.
- (e) **Confidential Information** means, in relation to a party, the confidential information of that party which relates to the subject matter of this Agreement and information relating to the design, specification and content of the Revelian System and the Services; the personnel, policies or business strategies of that party; and the terms on which access to the Revelian System or Services is being made available under this Agreement; but does not relate to information which is already in the public domain other than information which is in the public domain as a result of a breach of this Agreement.
- (f) **Fee** means the cost of Your Order based on the selection of Services nominated in the Order.
- (g) **Intellectual Property Rights** means all intellectual property rights in Australia and throughout the world in the Services, the Revelian Assessments, and the Revelian System, or any of them, including each of the following:
  - (i) Patents, copyright, rights in circuit layouts, registered or unregistered designs, trade or service marks, trade, business or company names, indication of source or appellation of origin, and any right to have confidential information kept confidential.
  - (ii) Any application or right to apply for registration of, or assert or waive, any of the rights referred to in paragraph 1.1(g)(i).
  - (iii) Moral rights, trade secrets, ideas, concepts, materials, know-how and techniques.
- (h) **Order** means an order by You to purchase the Services placed with Us from time to time.
- (i) **Participant** means an individual (an applicant, a candidate, a jobseeker, an employee current, prospective or future or a non-employee of You) who is asked to participate in Revelian Assessments.
- (j) **Participant Input** means the input of data, answers and other personal information as requested from time to time by the Revelian System and provided by the Participant.

Interpretation of this input on completion of Revelian Assessments produces Revelian Results.

- (k) Participant Terms and Conditions means the terms and conditions under which Revelian offers to provide and a Participant agrees to participate in or receive any Revelian Assessments or Services.
- (l) Privacy Policy means the privacy policy located on the Website and referenced in this Agreement.
- (m) Revelian, We, Our and Us means Revelian Pty Ltd ABN 58 089 022 202 of 1/21 Windorah St, Stafford QLD 4053.
- (n) Revelian Acceptable Use Policy means Our policy for acceptable use of the Revelian System and Services which is available on the Website, as may be amended from time to time.
- (o) Revelian Assessments means any professionally developed psychometric assessments and games designed specifically to identify various attitudes, traits, abilities and likely actions of Participants provided as part of the Services.
- (p) Revelian Results means the feedback, information and reports provided by the Revelian System based on a Participant's Input.
- (q) Revelian System means the Revelian technical infrastructure, including the Website, employed by Us for the provision of the Services.
- (r) Your Account means Your registered Account with Us.
- (s) Service means the Revelian products and services purchased through, and set out in, Your Accepted Order via the Revelian System accessible in the agreed term only.
- (t) UK Client means an individual resident in the United Kingdom (England, Wales, Scotland and Northern Ireland) acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession.
- (u) Website means the website located at addresses [www.revelian.com.au](http://www.revelian.com.au); [www.revelian.com](http://www.revelian.com); [www.revelian.co.nz](http://www.revelian.co.nz); [www.revelian.co.uk](http://www.revelian.co.uk); [app.revelian.com](http://app.revelian.com); [login.revelian.com](http://login.revelian.com); and such other domains as advised from time to time.
- (v) You are the person or organisation named in Your Order.

## 1.2 Interpretation

- (a) A reference to a person includes any other entity recognised by law and vice versa. Headings, underlining, marginal notes and indexes are only included for ease of reference and do not affect interpretation.
- (b) A reference to any legislation or legislative provision includes any modifying, consolidating or replacing legislation or legislative provisions from time to time, and includes all regulations, rules and other statutory instruments issued under the legislation.
- (c) A reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time.

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## 2 Service

- 2.1 We agree to provide the Service to You from the services commencement date set out in Your Accepted Order in the manner, and subject to such limitations including as to numbers of authorised users, as are specified in Your Accepted Order, and on the basis of these terms and conditions.
- 2.2 We reserve the right to refuse to accept an Order from You.
- 2.3 We accept an Order when the Order is received and payment is made (and not rejected), and when we notify you of our acceptance of your Order, including confirming the Services, commencement date, term, any initial or minimum term, Fees and payment terms (**Accepted Order**).

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Talent Insight Revealed

- 2.4** Each Accepted Order is a separate agreement between You and Us which is subject to these Terms and Conditions and the Privacy Policy.
- 2.5** We will provide the Services subject to the Agreement and to You meeting Your obligations under this Agreement in full.
- 2.6** You acknowledge and agree to each of the following:
- (a) the Service is provided on an AS IS and AS AVAILABLE basis and We make no warranties or guarantees in respect of uptime for the Service;
  - (b) due to the nature of the Service, We do not promise that it will be continuous, accessible at all times or fault-free;
  - (c) We reserve the right to vary, modify, suspend or discontinue any part of the Service with or without notice at any time and without any liability to You. If You are a UK Client and You are unhappy with the changes, You may cancel the Agreement with Us (either in respect of all the affected Services or just the Services You have yet to receive) by giving Us notice in writing. If You opt to cancel, We will arrange a full refund of the price you have paid for Services which have not been provided. Such a refund shall be Your sole remedy and Our sole liability in these circumstances.
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## 3 Your obligations

**3.1** By placing an Order through the Revelian Website, Application or Agreement:

- (a) You warrant that You have authority to bind any business on whose behalf You use the Revelian Website to purchase Services; and
- (b) if You are an individual procuring assessments from Revelian for your own purposes, You confirm that You are at least 18 years of age and are legally capable of entering into a legally binding contract.

**3.2** You must:

- (a) ensure that You comply with this Agreement;
  - (b) if you have placed an Order for the Services and have purchased the Services through an Accepted Order, pay the Fee in accordance with clause 11 (Payment); and
  - (c) use the Services in accordance with the Revelian Acceptable Use Policy, as may be amended from time to time with or without notice to You.
  - (d) provide current, accurate identification, contact, and other information that may be required as part of the registration process or continued use of the Service via Your account;
  - (e) ensure the security of Your use of the Service as outlined in the Schedule;
  - (f) ensure that the appropriate authority has been obtained for use the credit card details requested upon payment of the Order;
  - (g) maintain the confidentiality of Your Account, Account password, and accept full responsibility for all activities that occur with Your Account. Where the current Account details including password are provided, We are entitled to assume that the access is by You, or authorised by You, and You indemnify Us completely against any claim of loss or damage that results from wrongful, fraudulent or other access (using the correct Account details or password) to Your Account.
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## 4 Nature of Revelian Assessments and Data Collection

**4.1** You acknowledge and agree that:

- (a) a Participant may consent to the disclosure of valid Revelian Results obtained through use of the Services in relation to this Agreement to other Revelian clients on subsequent dates for different positions;
- (b) the information obtained from the Services is persuasive rather than conclusive and should always be used in conjunction with other available information;

- (c) due to the inherent limitations of assessment systems generally the Services may not properly or fully assess the capability of every person who takes a Revelian Assessment and You must not rely on the Revelian Results or any other output derived from the Services as statements of fact or as the exclusive basis for making any decisions in Your business;
- (d) You are solely responsible for ordering Services and using the resulting Revelian Results in an ethical manner and in accordance with any relevant laws, regulations and codes of ethics applicable to psychometric testing in Your jurisdiction;
- (e) we may survey Clients and Participants to ensure ongoing quality control of the Services and the Revelian System;
- (f) we may communicate directly with Participants from time to time in relation to assessments for personal and professional development; and
- (g) in order to access and participate in Revelian Assessments all Participants must agree to be bound by the Participant Terms and Conditions in respect of their use of the Services.
- (h) With the exception of the following assessments, Participants may not complete a Revelian Assessment again in a 12-month period from the date of undertaking such Revelian Assessment. This does not apply to:
  - Revelian Work Safety (development version)
  - MSCEIT (development version)
  - Revelian Behavioural Profile (development version)
  - Revelian Personal Insights Profile
  - Skills Tests

However, We may provide a Participant with the option to disclose valid Revelian Results obtained through the use of the Services to other Revelian clients on subsequent dates for different positions.

- 4.2** You provide Revelian with Participant information, including contact information. Participant Input is then obtained through the Revelian System and Service including the assessment process, and is then processed by Revelian, with the interpreted results provided to You in the form of Revelian Results. Participants may also receive a form of interpreted results.
- 4.3** Revelian may provide Participant Input to a third party for processing in order to provide Revelian Results to You.
- 4.4** We use Australian normative data where normative data is required in reporting for the purpose of comparison. We may, at our discretion, use normative data for Your country if it is available to us.
- 4.5** You warrant that Revelian Results will not be the only information relied on when You make decisions about a Participant and that You will always use Revelian Results in conjunction with traditionally used information including reference checks, structured interviews, and educational achievements.
- 4.6** Revelian collects Participant Input which may be used in a de-identified form to develop, maintain and update benchmarks and normative groups, and for assessment validation processes to ensure continued quality, and to maintain the validity and reliability of our assessments. Revelian may also collect additional research information from Participants after their use of the Revelian System or Services.
- 4.7** Please refer to the Revelian Privacy Policy and the Revelian Participant User Agreement located at <https://www.revelian.com/legals/> for information on collected, analysed or otherwise used by the Revelian System and Services.

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## 5 Access to, and use of, the Services

- 5.1** On purchasing the Services you will be provided with log-on credentials which will be used to access those Services.
- 5.2** The Services may only be used by persons authorised pursuant to this Agreement:
  - (a) By You or your authorised employees as described in Your Accepted Order;

- (b) By Participants completing the online assessments as part of a legitimate recruitment exercise by You;
- (c) By Participants completing assessments for You as part of an approved development or retention exercise; and
- (d) By Your authorised representatives or assigns who have been granted access by You to the Revelian System's read-only portal.

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## 6 Access to Revelian Results

- 6.1 We will provide you with Revelian Results in respect of Participants who have undertaken Revelian Assessments or who have been invited to undertake, and having already undertaken Revelian Assessments for other Revelian clients during the previous 12 months have elected to release Revelian Results to you, pursuant to this Agreement.
- 6.2 We will not release Revelian Results to you in respect of a Participant who has not consented to the release of their Revelian Results or who has withdrawn their consent for release of their Revelian Results to you.
- 6.3 You may elect not to release Revelian Results to Participants. However, you acknowledge and agree that we may release such Revelian Results to the relevant Participants following completion of the relevant recruitment process or at any time if we reasonably consider we are required to do so by any competent authority or regulatory body or pursuant to the *Privacy Act 1988* (Cth), the *Freedom of Information Act 1982* (Cth), the General Data Protection Regulation (GDPR) (EU) 2016/679 or any other applicable law including without limitation the *Data Protection Act 1988* (UK).
- 6.4 If You are a Client procuring Revelian assessments for your own purposes (ie Revelian Personal Insights Profile), we will provide you with Revelian Results in respect of your completed assessment in full compliance with the Australian Psychological Society Code of Ethics.

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## 7 Site licences

We offer some of the Services under a site licence agreement, valid for one physical office only. This usage will be monitored by way of IP address registration and tracking by Us. You must advise Us if You require extensions to agreed site licences. Should We identify unauthorised usage of a single site licence between multiple sites, We will invoice You, and You agree to pay, for multiple site licences.

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## 8 Software and Third Party Supplier Terms

- 8.1 We use third party suppliers to provide certain tests and systems complimentary to those provided by Us. In some cases these third party suppliers will require that Your use of those third party tests will be subject to a separate agreement or terms prescribed by them, which You must accept prior to use. Please refer to Revelian's Privacy Policy for information on data shared with third parties.

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## 9 Privacy (clauses 9.4 to 9.11 apply only to Clients located in the United Kingdom and clauses 9.12 to 9.15 apply only to Clients processing data of California residents)

- 9.1 As a condition to using the Service, You agree to the terms of the Revelian Privacy Policy issued or updated during the term of this Agreement.
- 9.2 We acknowledge that Your input, Participant Input and communications via the Revelian System between You and Participants, entered into the Revelian System, as applicable, are confidential to You and the Participant, and You acknowledge that these may also be read or accessed by Our employees in the maintenance and monitoring of the Revelian System and provision of the Services, subject to Our obligations of confidentiality.
- 9.3 In accessing or utilising any information pursuant to this Agreement You must not allow the breach of any Commonwealth or State privacy laws or any other laws in any other relevant jurisdiction applicable to the access or use of such information.
- 9.4 The following clauses 9.5 to 9.11 apply only in relation to Clients who are located in the United Kingdom.

- 9.5** In this clause 9 the terms **personal data**, **process**, **processing**, **data processor**, **data subject** and **data controller** have the meanings given to them in the UK's *Data Protection Act 1998* (as amended, supplemented or replaced from time to time) (**DPA 1998**).
- 9.6** In relation to any personal data provided or disclosed to Revelian by You or a Participant or another User, or which We otherwise process, in connection with Our performance of the Services for You under this Agreement, You acknowledge that We will be a data processor in relation to such personal data and We will process such personal data in accordance with this clause 9 and Our Privacy Policy. (This will include where We use any de-identified personal data for research or statistical analysis purposes.)
- 9.7** In relation to any personal data You provide to Us, you warrant that you have all necessary consents from the relevant individuals, and are otherwise permitted under the DPA 1998, to provide such personal data to Us. Please note that We store all personal data on the secure servers of [Amazon Web Services] in Australia. You agree to reimburse Us fully for any loss, damage, cost or expense suffered, incurred or paid by Us as a result of any claim made against Us by a data subject (or any other person or entity) that the provision of personal data by You to Us outside the EEA is in breach of or otherwise infringes the DPA 1998.
- 9.8** You and We undertake to each other that You and We shall each process personal data in compliance with, and shall otherwise comply fully with, the DPA 1988 and the provisions of this clause 9.
- 9.9** You and We undertake to each other that, having regard to the state of technological development and the cost of implementing any measures, You and We will take appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against the accidental loss or destruction of, or damage to, personal data to ensure a level of security appropriate to: (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and (ii) the nature of the data to be protected; and You and We will take reasonable steps to ensure compliance with those measures.
- 9.10** To the extent that We obtain the necessary consents from You or from any Participant or other User (as applicable) to collect and process personal data for purposes other than Our performance of the Services to You under this Agreement, We will be a data controller in our own right in relation to the processing of that personal data for such other purposes and shall be entitled to retain and use such personal data for such purposes. This will include, by way of example only, where We make any Revelian Results available to other Clients or where We contact Clients, Participants and other Users in relation to our own marketing activities. The purposes for which We use personal data are set out in Our Privacy Policy.
- 9.11** Where We provide Revelian Results to You, You warrant and undertake that:
- (a) You will have in place appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the personal data to be protected;
  - (b) You will have in place procedures so that any third party You authorise to have access to the personal data, including processors, will respect and maintain the confidentiality and security of the personal data. Any person acting under Your authority, including a data processor, shall be obligated to process the personal data only on Your instructions. This provision does not apply to persons authorised or required by law or regulation to have access to the personal data;
  - (c) that You have made all necessary registrations and notifications in accordance with the DPA 1998 and the General Data Protection Regulation (GDPR) (EU) 2016/679 and will ensure that such registrations and notifications are kept accurate and up to date;
  - (d) not transfer personal data to any country outside the European Economic Area without the prior consent of the data subject;
  - (e) take all reasonable steps to ensure the reliability and trustworthiness of staff who will have access to any personal data and ensure that any staff requiring access to any personal data are bound by their employment contracts to keep such personal data confidential and that

breach of such restriction may lead the relevant party to take disciplinary action against them;

- (f) not do or omit to do anything which causes Us to breach any data protection laws or contravene the terms of any registration, notification or authorisation under any data protection laws in any relevant jurisdiction; and
- (g) will process any personal data relating to the Revelian Results in compliance with, and shall otherwise comply fully with, the General Data Protection Regulation (GDPR) (EU) 2016/679, the DPA 1988 and the provisions of this clause 9.

**9.12** Each party to this agreement agrees to comply with the California Consumer Privacy Act of 2018 (CCPA) as applicable to it based on its role as a business, service provider, or third party.

**9.13** Revelian will not retain, use, or disclose personal information for any purpose other than on the relevant documented instructions from its Client or its affiliates, unless process is required by applicable law or otherwise allowed under the CCPA.

**9.14** Revelian shall not retain, use, disclose, or sell personal information for any commercial purpose other than to provide the Services specified under the Agreement.

**9.15** Revelian will reasonably cooperate and assist its Clients with meeting its Clients' CCPA compliance obligations and responding to CCPA-related inquiries, including responding to verifiable consumer requests, taking into account the nature of Revelian's processing and the information available to it.

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## **10 Confidentiality**

**10.1** A party to this agreement must not, without the prior written approval of the other party, disclose the other party's Confidential Information or use it for any purpose other than permitted by this Agreement.

**10.2** A party is not in breach of clause 10.1 in circumstances where it is legally compelled to disclose the other party's Confidential Information.

**10.3** Despite any other provision of this clause 10, either party may disclose the terms of this Agreement (other than the Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers or accountants, but must ensure that every person to whom that disclosure is made uses that information solely for the purposes of advising or reporting to that party.

**10.4** This clause 10 survives the termination of this Agreement.

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## **11 Payment**

**11.1** You must pay the Fee and all other invoiced amounts within the period for payment, and in the manner and on the terms, specified in Your Accepted Order.

**11.2** Revelian may, in its sole discretion, withhold the results of the Services or suspend access to Services if payment has not been made within the period for payment specified in Your Accepted Order.

**11.3** Should a dispute ever arise regarding payment of an account, all items not in dispute on the account remain due and payable within the terms agreed. All other terms shall remain enforceable. In the event of a dispute relating to a payment, You agree to work with Us to resolve the dispute promptly. If any disputed Fee is subsequently found to be valid, You agree to pay such Fee within five business days of the end of the dispute.

**11.4** If an initial or minimum term for the Services is specified in Your Accepted Order, You agree that the Fee for those Services is fixed for such initial or minimum term. During each renewal or extension of the term for such Services, the Fee for the Services will automatically increase, without any notice, by up to 5% rounded down to the next whole cent (or equivalent unit of currency in any jurisdiction outside Australia) unless agreed otherwise between the parties.

**11.5** You agree that You will comply with any taxation requirements in Your jurisdiction, including any "reverse charge" obligations if You are based in the United Kingdom.

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## 12 Cancellation and Refund Policy

**12.1** Except as set out in the further provisions of this clause 12, as the Revelian Services provide non-tangible, immediate fulfilment of assessments, we do not issue refunds once an Order is contracted. In the case of Revelian Enterprise and Revelian Express, You may re-issue assessments that were not completed by the originally invited Participants, for the same position or for future positions of Participants within the term of the agreement.

**12.2** If you are a UK Client:

- (a) When you submit Your Order you acknowledge and accept that you are making a request for Our immediate performance of the Service ordered and that consequently you will lose your right to cancel the Agreement with Us once the Service you have ordered is fully performed.
- (b) Until We have fully performed the Service, You have a legal right to cancel Your Agreement with Us during the period of 14 days starting on the day after the date of Your Accepted Order (the date on which We confirm Our acceptance of Your Order). This means that during the relevant period if You change Your mind or decide for any other reason that You do not want to receive the Service You have ordered, You can notify Us of Your decision to cancel and receive a refund.
- (c) To exercise Your right to cancel, You just need to let Us know that you have decided to cancel. The easiest way to do this is to contact Us by email at [accounts@revelian.com](mailto:accounts@revelian.com). However, You can also telephone Us on +61 7 3552 5700, contact Us by post at GPO Box 2916, Brisbane QLD 4001 or use Our cancellation form on page 10 of this document (a link to the cancellation form will be included in Your Accepted Order and a copy is attached in the Schedule to this document). If You email Us or use Our cancellation form We will email You to confirm We have received Your cancellation notice. Your cancellation is effective from the date You send Us the email, send Us the cancellation form, telephone Us or post the letter to Us.
- (d) If You cancel this Agreement, We will refund all payments received from You in relation to Your Accepted Order within 14 days after the day on which We receive Your cancellation notice. However, because You asked Us to begin the performance of the Service during the cancellation period, You will be obliged to pay Us an amount which is in proportion to what has been performed up to the time You communicated Your decision to cancel.

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## 13 GST

**13.1** For the purpose of clause 13:

- (a) GST means GST within the meaning of the GST Act;
- (b) GST Act means “A New Tax System (Goods and Services) Act 1999” (as amended); and
- (c) Expressions set out in italics in this clause 6 bear the same meaning as those expressions in the GST Act.

**13.2** To the extent that We make a taxable supply in connection with this Agreement, except where express agreement is made to the contrary and subject to clause 13, the consideration payable by You under this Agreement represents the value of the taxable supply for which the payment is to be made.

**13.3** Subject to clause 13.4 if We make a taxable supply in connection with this Agreement for a consideration which, under clause 13.1, represents its value, then You must also pay, at the same time and the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.

**13.4** The recovery of consideration for any taxable supply made under this Agreement is subject to Us issuing to You a tax invoice in respect of that supply.

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## 14 Other Services tax

**14.1** If You are located outside of Australia and GST is not applicable, the Fee is exclusive of any applicable services or value-added tax or similar tax, which shall be added to Your invoice and payable at the same time as the Fee.



## 15 Termination

**15.1** Subject to clause 15.2, You may cancel Your use of the Services without cause at any time by providing written notice to Us (through Contact Us) on the Website. You must give us the required period of notice specified in Your Accepted Order.

**15.2** If Your Accepted Order specified an initial or minimum term for the Services:

- (a) the term of such Services is automatically extended at the end of the initial or minimum term (and at the end of each additional term under this clause) for a further period equivalent to the length of the initial or minimum term specified, unless You give us written notice of Your intention not to renew Services term at least one month prior to the expiration of the then current term;
- (b) any notice to terminate this Agreement given under clause 15.1 may not expire before the end of any such initial or minimum term or any renewal thereof, and You shall pay Us the Fees due in respect of the balance of the then current term and or the listed minimum commitment on Your accepted Order.

**15.3** Subject to clause 15.4, We may at any time and for any reason, by notice to You by email, terminate our provision of Services to you, terminate this Agreement, or suspend or terminate Your log-on credentials for the use of the Services.

**15.4** If Your Accepted Order specified an initial or minimum term for the Services, then in addition to our rights under the subsequent clause 15.5, We may terminate this Agreement without cause on 90 days' prior written notice to you. If We exercise our right to terminate under this clause 15.4, we will refund You, on a pro-rated basis, any Fees paid in advance in respect of the period from the termination date to the end of the period for which Fees were paid in advance by You (**Termination Refund**). We may set-off any other sums due and owing to Us by You against the Termination Refund.

**15.5** Either party may terminate the Services at any time by written notice to the other if any of the following apply:

- (a) the other party fails to carry out any provision of this Agreement, the failure is capable of remedy and the defaulting party does not remedy that failure within 10 business days after written notice to the defaulting party requiring it to be remedied;
- (b) the other party fails to carry out any material provision of this Agreement and the failure is not capable of remedy;
- (c) a warranty given by the other party in this Agreement is materially incorrect;
- (d) it becomes unlawful for that party to perform its obligations under this Agreement;
- (e) the other party is a body corporate and:
  - (i) becomes an externally-administered body corporate under the Corporations Act 2001;
  - (ii) steps are taken by any person towards making that party an externally-administered body corporate;
  - (iii) a controller (as defined in section 9 of the Corporations Act 2001) is appointed to any of the property of that party or any steps are taken for the appointment of a controller;
  - (iv) is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act 2001; or
  - (v) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.5(i) to clause 15.5(iv) (inclusive).

**15.6** On termination, Your log-on credentials for access to and use of the Services will be disabled, You will have no access to and no right to use the Service, and You will not be granted access to Your user account, or any files, or other information contained in Your user account although residual copies of information may remain in Our system. We retain ownership of any Participant Input, Revelian Assessments and Revelian Results.

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## 16 Intellectual Property Rights.

- 16.1** You acknowledge that We own all right, title and interest in and to the Service [including any Revelian Results], including without limitation all intellectual property rights therein (Our Rights), and Our Rights are protected by intellectual property laws. Accordingly, You must not copy, reproduce, alter, modify, reverse engineer or create derivative works from the Service, save as permitted by law. You must not use any robot, spider, other automated device, or manual process to monitor any content from, hosted by or that is otherwise available using the Service.
- 16.2** Our Rights do not include third-party content used as part of the Service, including the content of third party advertisements or communications appearing on the Service.
- 16.3** You do not acquire any rights in connection with the Services or the Revelian System other than those usage rights as specified in this Agreement. You do not acquire any right, title or interest in or to any improvements, modifications, alterations, adaptations or derivative works of the Services created or developed by Us in the course of providing the Services to You.
- 16.4** Under no circumstance may the Revelian logo be removed from reports or documentation generated using the Revelian System, Services or methodology, or otherwise provided under this Agreement.
- 16.5** Nothing in this Agreement confers on You the right to sub-license the use of or access to the Services, the Revelian System or Revelian Assessments to third parties other than those approved herein.

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## 17 Warranties and indemnity

- 17.1** You warrant to the best of Your knowledge that the materials and information provided to Us for the purposes of providing the Services:
- (a) are true, correct and current;
  - (b) do not infringe the rights of any third party;
  - (c) are able to be legally provided to Us and its disclosure does not breach any law or any obligation (whether of confidence or otherwise) owed to any person; and
  - (d) are not illegal, defamatory, threatening, racially, sexually or politically offensive, dishonest or misleading, and do not violate any Commonwealth, State or local government law or any other applicable law in any relevant jurisdiction.
- 17.2** You acknowledge that You have not relied upon or been induced by any representation by Us and We make no warranty or representation as to:
- (a) the results that may be obtained through the Service;
  - (b) the accuracy, reliability or otherwise of any information obtained through the Service;
  - (c) the Service or delivery network being uninterrupted, timely or error free; or
  - (d) whether Your use of the Service is legal.
- 17.3** You indemnify and keep indemnified Us and Our officers, employees, agents, subsidiaries and affiliates against all claims (including third party claims), demands, damages, costs (including legal costs), penalties or suits arising out of or consequential upon Your use of the Service and any breach of any warranty or other term of this Agreement.

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## 18 Limitation of Liability (not applicable to UK business clients)

- 18.1** To the extent permissible by law We exclude any liability:
- (a) for any failure of performance, error, omission, interruption, deletion, defect or delay in transmission or operation;
  - (b) or any communications line failure;
  - (c) for theft or destruction;
  - (d) unauthorised access to, alteration or use of the Revelian System; or

(e) for any injury, loss or damage

arising out of provision of the Services, provided however, that We do not exclude any such liability if it arises as a result of Our failure to take reasonable steps to guard against and use best endeavours to immediately rectify any of the matters referred to in this clause 18.1(a) to (e) of which We are aware.

**18.2** You acknowledge that We assume no liability and make no representations impliedly or expressly to assume or contribute in any form towards any costs You may incur through Your use of the Service.

**18.3** To the fullest extent permissible at law, We are not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the Products, the provision of or failure to provide the Service or an Order, or for any content obtained through the Revelian System, any comments on or analysis of a Participant, any impact of any comments or analysis in respect of any decision of any person to make an employment offer or employ a Participant or otherwise arising out of the Service or an Order, whether based on contract, negligence, strict liability or otherwise, even if We have been advised of the possibility of damages.

**18.4** You expressly agree that use of the Services, the Revelian System and placing an Order is at Your own risk. The Services and the Revelian System are provided to the Client on an "as is" and "as available" basis. To the extent allowed by law, Our liability for breach of a term implied into this Agreement by any law is excluded.

**18.5** In no circumstances is Revelian liable for any damages arising out of Your use, installation, improper use or inability to use the Services or the Revelian System.

**18.6** We give no warranty in relation to the Service or the Revelian System provided or supplied. Under no circumstances are We or any of Our carriers or suppliers liable or responsible in any way to You or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues), as a result, direct or indirect of any defect, deficiency or discrepancy in the Service or the Revelian System including its form, content and timeliness of delivery, including, without limitation, for and in relation to any of the following:

- (a) any Service supplied to You;
- (b) any delay in supply of the Service;
- (c) any failure to supply the Service;
- (d) any technical or non-technical failure; or
- (e) any content or information accessed via the Service with or without Your authorisation.

**18.7** You acknowledge that the Products and Services are not goods or services of a kind ordinarily acquired for private, domestic or household use or consumption. To the extent that the Australian Consumer Law applies, You acknowledge that Our liability is limited to, at Our sole discretion, the provision of resupplying the Service or the costs of having the Service supplied again.

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## **19 Limitation of Liability to UK business clients**

**19.1** Nothing in this Agreement restricts or excludes Our liability to You for death or personal injury caused by Our negligence or the negligence of Our employees, agents or subcontractors; fraud or fraudulent misrepresentation; or any other liability in respect of which it would be unlawful to restrict or exclude Our liability.

**19.2** Except as expressly stated in this Agreement:

- (a) You are responsible for making all arrangements necessary for You to have access to the Service and We shall not be liable to You under any circumstances for your improper use of or inability to use the Service or the Revelian System;
- (b) We do not guarantee that the Service will be secure or free from bugs or viruses. You are responsible for configuring Your information technology, computer programmes and platform

in order to access the Service or the Revelian System. You should use Your own virus protection software. We will not be liable for any loss or damage caused by a virus, distributed denial-of-service attack, or other technologically harmful material that may infect Your computer equipment, computer programs, data or other proprietary material due to Your use of the Service or the Revelian System;

- (c) You assume sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information or instructions provided to Us by You in connection with the Services, or any actions taken by Us at Your direction;
- (d) We do not give any representation, warranties or undertakings in relation to the Services. Any representation, condition or warranty which might be implied or incorporated into this Agreement by statute, common law or otherwise is excluded to the fullest extent permitted by law;
- (e) the Service is provided to You on an "as is" basis; and
- (f) the Service is provided to You for Your internal business purposes only and not for resale.

**19.3** Subject to clause 19.1, We will under no circumstances whatever be liable to You, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:

- (a) any loss of profits, sales, business, or revenue; or
- (b) loss or corruption of data, information or software; or
- (c) loss of business opportunity; or
- (d) loss of anticipated savings; or
- (e) loss of goodwill; or
- (f) pure economic loss; or
- (g) any indirect or consequential loss.

**19.4** Subject to clause 19.1, Our total liability to You in respect of all losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed a sum equivalent to the total aggregate Fees payable by You to Us in the 12 months immediately preceding the event giving rise to the liability.

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## **20 Limitation of Liability to UK Consumers**

**20.1** Nothing in this Agreement restricts or excludes Our liability to UK Consumers for death or personal injury caused by Our negligence or the negligence of Our employees, agents or subcontractors; fraud or fraudulent misrepresentation; or any other liability in respect of which it would be unlawful to restrict or exclude Our liability.

**20.2** You acknowledge that the Service has not been developed to meet Your individual requirements, and that it is therefore Your responsibility to ensure that the facilities and functions of the Service, as described on the Revelian Websites and in any related documentation, meet your requirements.

**20.3** We only supply the Services to UK Consumers for non-commercial, non-business use. You agree not to use the Services for any commercial, business or re-sale purpose, and We have no liability to You for any loss of profit, loss of business, business interruption or loss of business opportunity.

**20.4** We will not be liable for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and You acknowledge that the Service or the Revelian System may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

**20.5** We provide certain elements of Our Service to You free of charge. We do not guarantee that any free of charge Services will always be available or uninterrupted and We may suspend, withdraw,

discontinue or change all or any part of such Services without notice. We will not be liable to You if, for any reason, the free of charge Services are unavailable at any time or for any period.

- 20.6** Any account You may have with Revelian is personal to you. You must not allow another person to use your account. If You have reason to believe the security of your account has been compromised in any way, You must notify Us immediately so that We are able to suspend your account. We are not liable to You for any loss or damage You may suffer as a result of the use of your account by another person, whether such use is with or without Your consent.
- 20.7** To the extent that Our liability has not been limited or excluded under this clause 20, We are only responsible for loss or damage You suffer that is a foreseeable result of Our breach of the Agreement or Our negligence, but We are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if they were an obvious consequence of Our breach or if they were contemplated by You and Us at the time we entered into this Agreement.
- 20.8** Our maximum aggregate liability to you under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to £500 (or its equivalent in any applicable currency). This limitation does not apply to the types of loss set out in clause 20.1.
- 20.9** Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office. Nothing in these Terms will affect these legal rights.
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## **21 Events Outside Our Control**

- 21.1** We will not be liable or responsible for any failure to perform, or delay in performance of, any of Our obligations under this Agreement that is caused by an Event Outside Our Control.
- 21.2** An Event Outside Our Control means any act or event beyond Our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks, public utilities and other infrastructure.
- 21.3** If an Event Outside Our Control takes place that affects the performance of Our obligations under this Agreement, We will contact you as soon as reasonably possible to notify you and Our obligations under this Agreement will be suspended and the time for performance of Our obligations will be extended for the duration of the Event Outside Our Control.
- 21.4** If you are a UK Client, You may cancel the Agreement if an Event Outside Our Control takes place.
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## **22 Dispute resolution**

- 22.1** The provisions of this clause 22 do not apply to UK Clients.
- 22.2** Any dispute, controversy or claim arising out of or in connection with this Agreement, including (without limitation) any question regarding the existence, validity, breach or termination of this Agreement must first be the subject of arbitration, administered by the Australian Commercial Disputes Centre Limited (ACDC) conducted and held in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law in force at the date of this Agreement.
- 22.3** The arbitrator must be agreed between the parties from a panel suggested by ACDC or failing agreement, an arbitrator appointed by the Secretary General of ACDC.
- 22.4** The arbitration must be conducted and held in accordance with and subject to the laws of Queensland.
- 22.5** Any arbitration proceedings must be held in Brisbane, Australia.
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## **23 Variation of these Terms and Conditions**

- 23.1** We amend these Terms and Conditions from time to time. Please look at the effective date at the top of this page to see when these Terms and Conditions were last updated.

# REVELIAN

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- 23.2** Every time You order Services from Us, the Terms and Conditions in force at the time of your Order will apply to the Agreement between You and Us.
- 23.3** You acknowledge and accept that We may revise these Terms and Conditions as they apply to your Accepted Order from time to time to reflect changes in relevant laws and regulatory requirements.
- 23.4** If you are a UK Client and We revise these Terms and Conditions as they apply to Your Accepted Order, We will contact you to give you reasonable advance notice of the changes and let You know how to cancel the Agreement if You are not happy with the changes. You may cancel either in respect of all the affected Services or just the Services You have yet to receive. If You opt to cancel, We will arrange a full refund of the price you have paid for Services which have not been provided. Such a refund shall be Your sole remedy and Our sole liability in these circumstances.

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## 24 General

- 24.1** A notice required to be given by Revelian in connection with this Agreement must be submitted in writing and must be delivered in person, by certified mail, by facsimile or by email; and must be addressed to the postal address, facsimile number or email address as set out in Your Accepted Order, or such other address, facsimile number or email address as may be notified to us from time to time in accordance with this 24.1.
- 24.2** A notice required to be given by you in connection with this Agreement must be in writing and delivered in person, by certified mail or facsimile or by email and addressed to Revelian at the postal address, facsimile number or email: [accounts@revelian.com](mailto:accounts@revelian.com) for us as set forth herein, or as may be notified to you from time to time.
- 24.3** Any consent or approval referred to in, or required under, this Agreement from any party may be given or withheld, or given subject to any conditions, as that party in its absolute discretion thinks fit.
- 24.4** A party must not assign or novate any right or obligation under this Agreement without the other party's prior written consent.
- 24.5** The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.
- 24.6** Severability
- (a) If any part of this Agreement is void or unenforceable in any jurisdiction, then for the purposes of that jurisdiction if possible, that part is to be read down so as to be valid and enforceable.
  - (b) If clause (a) is not possible, and that part does not go to the essence of the Agreement, that part will be severed from this Agreement and the rest of this Agreement continues to have full force and effect.
- 24.7** The laws in force in Queensland and the Commonwealth of Australia govern this Agreement. The parties submit to the non-exclusive jurisdiction of the courts of Queensland. If You are a UK Client or California resident, this clause shall not prevent You from starting legal proceedings in Your local court.
- 24.8** Any legislation that gives contractual rights to non-parties (including without limitation the *Contracts (Rights of Third Parties) Act 1999* (UK)) does not apply to this Agreement.

**SCHEDULE**

**CANCELLATION FORM – UK CLIENTS ONLY**

***Use this form only if you wish to cancel Your Agreement with Us.***

Once You have completed this form, send it to Us by email or post.

To: Revelian Pty Ltd  
1/21 Windorah St  
Stafford QLD 4053  
Email: [accounts@revelian.com](mailto:accounts@revelian.com)

I/we\* hereby give notice that I/we\* cancel my/our\* Agreement for the supply of the following Services:

.....  
.....  
.....  
.....

(\* Delete as applicable.)

Date the contract was made: .....

Reference number: .....

My name: .....

My address: .....

.....

.....

My signature .....

*(only if form is notified on paper):*

Date: .....