



Standard Terms and Conditions

Date: February 6, 2023

1. **Definitions.** All defined or capitalized terms used in this Standard Terms and Conditions shall have the meanings given such terms in the Service Agreement, unless said terms are defined herein or unless the context clearly indicates to the contrary. The terms of these Standard Terms and Conditions will control any conflict with a term in the Agreement, Change Order, or Statement of Work unless expressly agreed to otherwise in writing between Risdall and Client.
2. **Ownership of Intellectual Property**
 - a. Risdall acknowledges and agrees that Client shall exclusively retain all ownership, rights, title, and interest in and to all copyrights, trade secrets, works of authorship, inventions, know how, and source identifying matter that is created or developed by Client, its employees or independent contractors prior to and during the Term of the Service Agreement that is delivered to Risdall for incorporation into a deliverable (identified in Section 2 of the Service Agreement) (the “**Product**”) (collectively “**Client Intellectual Property**”).
 - b. Client acknowledges and agrees that Risdall shall exclusively retain all ownership, rights, title, interest, in and to all copyrights, trade secrets, works of authorship, inventions, know how, and source identifying matter and all other intellectual property and improvements developed by Risdall prior to, during, and following the Effective Date of this Agreement (collectively “**Risdall Intellectual Property**”).
3. **License**
 - a. Client hereby grants Risdall a limited, non-exclusive, non-transferable, revocable right to use, reproduce, and make derivative works of Client Intellectual Property in a Product.
 - b. Client shall have a limited, non-exclusive, non-transferable, revocable right to use, display, and distribute the Risdall Intellectual Property. If Client fails to pay Risdall any amount required under the Service Agreement or Change Order within the specified time period, Client’s rights to use, display, or distribute the Risdall Intellectual Property may be revoked by Risdall. To the extent Client, its managers, members, parents, subsidiaries, affiliates, agents, divisions, employees, employers, shareholders, officers, or directors, create any improvements, modifications, changes or derivative works pertaining to the Risdall Intellectual Property, Client hereby assigns all rights, title, and interest in and to such improvements free and clear of any liens, claims, or encumbrances.
 - c. Client grants Risdall an exclusive, non-transferable, irrevocable, and royalty-free license to use, copy, display, and distribute a Product for the purposes of promoting and marketing Risdall’s services.
4. **Third Party Content and Licenses.** Client acknowledges and agrees that a Product may contain fonts, images, logos, graphics, text, video, computer code, and other content obtained from third-party sources that is owned by a third party (“**Third Party Content**”). Client acknowledges and agrees that Risdall makes no representations or warranties of any kind

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with regard to such Third Party Content and Client shall be solely responsible for compliance with any third party license terms, license fees, or royalties for any Third Party Content or other content in addition to materials provided by Client in connection with a Product. Client will pre-approve the use of any Third Party Content provided by Risdall. In the event there is a defect in any Third Party Content the owner of such third party content shall be solely responsible for such defects.

5. **Term.** The Agreement shall be effective upon the Effective Date and shall remain in force until the Agreement End Date, unless terminated early pursuant to Section 6 of this Agreement (the “**Term**”).
6. **Termination**
 - a. Either Party may terminate this Agreement for any reason by giving the other Party sixty (60) days prior written notice.
 - b. Either Party may terminate this Agreement by giving notice to the other Party of a material breach that remains uncured for thirty (30) days.
 - c. Either Party may immediately terminate this Agreement if the other Party engages in any fraudulent or dishonest action, or failure to act, with respect to the business or affairs of the other Party including, without limitation, providing false or misleading information to a Party as part of the negotiation of this Agreement;
 - d. Either Party may terminate this Agreement immediately upon notice in writing to the other Party if such other Party:
 - i. adopts a plan of complete liquidation or dissolution;
 - ii. files a petition under any bankruptcy or insolvency laws; or
 - iii. becomes the subject of a petition under any bankruptcy or insolvency.
 - e. Termination of this Agreement will not discharge Client’s obligation to pay Risdall any amounts owed to Risdall.
7. **Confidentiality.** The Parties acknowledge that they will have access to and become acquainted with various trade secrets, inventions, processes, concepts, and specifications owned by or licensed to the other Party or used by a Party in connection with its business (collectively “**Confidential Information**”). The Parties agree that they will not use or disclose any Confidential Information either during the Term of this Agreement or at any time thereafter. All Confidential Information, whether prepared by a Party or otherwise coming into its possession, shall remain the exclusive property of the disclosing Party. Neither Party shall retain any copies of Confidential Information without the disclosing Party’s prior written permission. Upon the expiration or earlier termination of this Agreement, or whenever requested by the disclosing Party, the receiving Party shall immediately deliver to the disclosing Party all physical media containing Confidential Information in its possession or under its control.
8. **Equitable Remedies and Enforcement.** The Parties acknowledge and agree that a breach of any of the obligations set forth in Section 7 of this Agreement shall cause irreparable

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injury and shall entitle the disclosing Party to equitable relief or remedy, and the disclosing Party shall not be required to post a bond to secure such relief or remedy. The pursuit or securing of any such equitable relief shall not prohibit or limit the disclosing Party from seeking or obtaining any other remedy provided under this Agreement or by law. The covenants, agreements, and remedies provided herein are in addition to, and are not to be construed as a replacement for or limited by, the rights and remedies otherwise available to the disclosing Party including, but not limited to, those rights and remedies contained in the Uniform Trade Secrets Act, or its state counterparts.

9. **Limited Warranty.** Risdall will use commercially reasonable efforts to repair, one time and without charge, any defects in a Product provided Client notifies Risdall in writing of the specific defect within 14 calendar days after delivery of the Product (the “Testing Period”). In the event Client does not notify Risdall within the Testing Period of any defect, such Product will be deemed accepted. For the avoidance of doubt, a Product does not include any services.
10. **Disclaimer of Warranties.** EXCEPT FOR THE LIMITED WARRANTY IN SECTION 9, RISDALL PROVIDES THE PRODUCT “AS IS” WITHOUT WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE. RISDALL DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THOSE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. NO REPRESENTATION OR AFFIRMATION OF FACT MADE BY RISDALL’S EMPLOYEES, SUBCONTRACTORS, OR ANYONE ELSE ACTING ON BEHALF OF RISDALL SHALL BE DEEMED A WARRANTY BY RISDALL.
11. **Limitation on Liabilities.** IN NO EVENT WILL RISDALL, OR ITS DIRECTORS, OFFICERS, MEMBERS, EMPLOYEES, AGENTS, SISTER COMPANIES, SUBSIDIARIES, REPRESENTATIVES, SUBCONTRACTORS, AFFILIATES, OR ANYONE ELSE ACTING ON BEHALF OF RISDALL (COLLECTIVELY “**RELATED PARTIES**”) BE LIABLE TO CLIENT FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT, SERVICES, THIRD-PARTY TOOLS, OR ANY WEB SITE HOSTING SERVICES PROVIDED TO CLIENT BY A THIRD-PARTY HOSTING SERVICE PROVIDER, REGARDLESS OF THE BASIS OF THE CLAIM. RISDALL'S AND THE RELATED PARTIES' MAXIMUM LIABILITY WILL BE LIMITED IN ALL CASES TO ACTUAL DIRECT DAMAGES TO THE EXTENT CAUSED SOLELY BY THE ACTS OR OMISSIONS OF RISDALL OR THE RELATED PARTIES, SUBJECT TO A MAXIMUM AMOUNT EQUAL TO THE AMOUNT PAID FOR THE PRODUCT OR SERVICE WHICH DIRECTLY CAUSED SUCH DAMAGE.
12. **Indemnification.** During and after the Term of this Agreement, Client shall indemnify, defend and hold Risdall, its directors, officers, employees, subcontractors, and subsidiaries harmless from and against any and all actual or alleged third-party action, claim, demand, suit, liability, loss, costs, expenses (including, without limitation, attorneys’ fees) or damages asserted against Risdall arising out of or related in any way to:
 - a. any act, omission, negligence, misrepresentation, error, or omission on the part of Client, its directors, officers, employees, or other representatives;
 - b. any claim of infringement based, in whole or in part, on Client Intellectual Property;

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- c. any claims, warranties or representations made by Client or Client's employees or agents that differ from any warranty provided by Risdall;
 - d. the Services or Product damaging a third party to the extent such claim is based on Client's use of the Product in violation of this Agreement; or
 - e. Client's failure to abide by all applicable laws, rules, regulations, and orders.
13. **Notices.** Any notice required or permitted to be given with respect to this Agreement shall be delivered to the Party identified in the Service Agreement and deemed given: (i) upon receipt when delivered personally, or by registered mail; or (ii) on the third business day after mailing if by regular or certified mail directed to the address identified in the Service Agreement. Either Party may change its address for notices or copies of notice by notice to the other Party in accordance with the provisions of this Section.
14. **Miscellaneous**
- a. **Relationship of Parties.** Client and Risdall are contractors independent of one another, and neither Party shall have the power or authority to bind the other Party with respect to any third party. Each Party shall bear its own costs and expenses, except as otherwise specified herein.
 - b. **Governing Law.** This Agreement shall be deemed to have been made in the State of Minnesota and shall be governed by, construed, and interpreted in accordance with the laws of the State of Minnesota.
 - c. **Arbitration.** Each dispute, claim and controversy (whether arising during or after the term hereof) arising out of or relating to this Agreement or the breach thereof shall be finally settled, upon demand and written notice by either party hereto, by arbitration conducted by a single arbitrator who shall be a retired judge or other party mutually agreeable to the parties. The parties shall share the arbitrator's fees equally. Unless otherwise agreed upon, the place of arbitration proceedings shall be in Ramsey County, Minnesota. The decision of the arbitrator shall be final and binding on both parties. This Section shall survive expiration or termination of this Agreement for any reason.
 - d. **Amendment.** This Agreement may be amended or modified only through a written document that is signed by the Parties, except that Risdall can change its hourly rates in the case of a time and materials payment arrangement without Client's written consent. An amendment will be effective upon the date a written modification is fully executed or within thirty (30) after Risdall gives written notice to Client of the change to its hourly rates.
 - e. **Severability.** In the event that an arbitrator or court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable for any reason, such provision or part thereof shall be considered separate from the remaining provisions of this Agreement, which shall remain in full force and effect.

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- f. Waiver of Breach. Any waiver by Risdall or Client of a breach of any provision of this Agreement shall not operate as or be construed as a waiver of any further or subsequent breach of any provision of this Agreement.
- g. Attorneys' Fees. The Parties acknowledge and agree that in the event either Party takes any action to enforce its rights under this Agreement, including, but not limited to, collection of any amount owed to Risdall for the Services or a Product developed or provided hereunder, the prevailing Party in any such action shall be entitled to recover its reasonable attorneys' fees, including those incurred in any resulting appeal, and costs, including its collection costs.
- h. Force Majeure. Risdall will not be liable for failure to perform any obligations under this Agreement when such performance is delayed by fire, flood, tornado, war, embargo, riot, earthquake or other similar substantial cause beyond Risdall's control.
- i. Survival. Any provision of this Agreement which by its terms or meaning is intended to be of continuing force and effect shall be deemed to survive termination hereof, including but not limited to Sections 2, 3(c), 4, 6(e), 7, 8, 9, 10, 11, 12, and 14.
- j. Remedies Cumulative. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which a Party would otherwise have.
- k. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered is an original, but all such counterparts will constitute one and the same instrument. Delivery of a copy of this Agreement executed by a Party, including by fax or e-mail, has the same force and effect as personal delivery by such Party of an executed paper original of this Agreement.
- l. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns.
- m. Assignment. Client may not assign this Agreement or its rights hereunder, nor delegate its duties hereunder, without the prior written consent of Risdall. Any assignment or delegation of its duties in violation of this Section is void. Risdall may assign this Agreement or its rights hereunder, or delegate its duties without Client's consent.
- n. Third-Party Beneficiaries. There are no intended beneficiaries of this Agreement.
- o. Heading Disclaimer. The headings or captions used in this Agreement are for reference purposes only and are not intended to be used or relied upon in interpreting or enforcing this Agreement.
- p. Authority to Sign. The Parties represent that each has the full and necessary authority to enter into this Agreement, that the individual executing this Agreement has full authority to bind the Parties, as the case may be, to all terms and conditions of this Agreement, and that the Parties are each fully capable of performing all terms and conditions of this Agreement

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- q. Interpretation. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.