

**These terms and conditions are dated 11 December 2020.**

Risk Coalition Research Company Limited, a company registered in England and Wales under company number 11689529 with registered office at 86-90 Paul Street, London EC2A 4NE (the “**Supplier**”) makes available a Gap Analysis and Benchmarking Insights tool, known as ‘GABI’ (the “**Software**”), on a subscription basis.

The Software is a web-based application provided to Subscribers on a subscription basis. A “**Subscriber**” is any user who signs up, and pays the relevant fee, to access the Software. These terms and conditions apply to any Subscriber who pays for the Software and the Support Services and any company the Subscriber purchases the subscription on behalf of, whether or not the Subscriber has used a personal or business credit card. Where a purchase is made on behalf of a company, the company shall be deemed to be the Subscriber.

Your use of GABI, as a Subscriber, does not constitute professional advice by the us, the Supplier, as GABI solely facilitates a self assessment of your organisation’s risk oversight and risk management. The service should not be viewed as a substitute for such professional advice or services, nor should it alone be used as a basis for any decision that may affect your business and you should consult a qualified professional adviser where necessary.

We do not accept any responsibility for any errors this service may contain, whether caused by negligence or otherwise, or for any losses, however caused, sustained by any person that relies on it. The information presented can and will change; we are under no obligation to update such information. We make no representations as to the sufficiency of this service for your purposes, and, by providing them, we are not rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. We do not assume any obligations as a result of your access to or use of the GABI service.

The Subscriber wishes to subscribe to the Software (delivered as software as a service) and acquire a temporary licence to use the Software on the following terms.

## **1. The Software**

- 1.1 In consideration of the receipt by Supplier of the Subscription Fee (defined below), Supplier grants to the Subscriber a non-exclusive, non-transferable, right to use the Site and the Software for the Term subject to the terms set out below.
- 1.2 Further to clause 1.1, the Subscriber shall be entitled to use the Software under this Agreement, provided that the Subscriber shall abide by the terms of this Agreement. This Agreement shall come into existence when the Subscriber pays the initial subscription fee as defined in clause 2 below. The subscription term is 12

months from payment of the subscription fee.

- 1.3 Supplier shall use commercially reasonable endeavours to make the Software available during the term, of this Agreement, subject to any planned updates, of which the Supplier shall use reasonable endeavours to notify the Subscriber in advance, or any required maintenance to the Software where that interruption to service is planned to exceed 12 hours.
- 1.4 The Subscriber shall be entitled to appoint up to the number of individual (as contained within the relevant subscription level) that may have access to the content contained within the Software, and the Subscriber will procure that all such individuals comply with the terms of this Agreement.
- 1.5 The Subscriber shall be entitled to:
  - (a) print from the Software on the basis set out in this Agreement; and
  - (b) otherwise use the Software for the purposes contemplated in this Agreement.
- 1.6 The scope of the rights granted in this clause 1, to which the Subscriber must adhere, are as follows:
  - (a) the Software must only be used for the purpose or in a context for which the Software was designed;
  - (b) the user questionnaires contained within the Software shall be used only for, or in direct relation to, the subject matter of the module within the Software subscribed for;
  - (c) use of the Software shall be restricted to the normal business purposes of the Subscriber;
  - (d) the Software may only be used by, or for the benefit of, the Subscriber, and employees, contractors or agents of the Subscriber; and
  - (e) the Subscriber may not use the Software other than as specified in this Agreement within Schedule 1 or with prior written consent of Supplier, and the Subscriber acknowledges that additional fees may be payable on any change of use approved by Supplier;
  - (f) the Subscriber shall not provide copies of, disseminate, or otherwise disclose in any way whatsoever the content of the question banks contained within the Software, in whole or in part, to any persons other than those individuals authorised under clause 1.4 above, unless expressly permitted by this Agreement or by the prior written approval of Supplier;
  - (g) except as stated in this clause 1 and to the extent permitted by applicable law, the Subscriber has no right (and shall not permit any third party) to

copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software, in whole or in part.

1.7 Supplier will provide the Subscriber with the support services, as set out in Annex B, during the term of this Agreement (the “**Support Services**”).

1.8 The Software allows the Subscriber, and other users of the Software, to be able to benchmark certain data in comparison to others, using anonymous numeric data. At no time shall such data contain any indication of underlying identity, or any personal data. Such underlying data is the property of the Supplier, and shall not at any time become the property of the Subscriber. The Supplier is entitled to retain such information gathered from the Subscriber, in accordance with its privacy policy, and provided it is anonymised, in order to continue to provide the service to other users.

## **2. Subscription Fee**

2.1 The Subscriber shall pay to Supplier the subscription fee detailed on [www.riskcoalition.org.uk](http://www.riskcoalition.org.uk) (the “**Website**”) prior to the activation of the Software.

2.2 Access to the Software and the Support Services will be granted to the Subscriber within a maximum of two business days of the first subscription fee being received in the bank account specified by Supplier unless otherwise agreed by the parties.

## **3. Modifications**

3.1 Supplier may display updates regarding material changes, if it believes it is helpful to customers to do so, and Supplier shall make all modifications available to the Subscriber through the Software on the terms on which they are generally made available to Supplier's subscribers.

## **4. Warranties**

4.1 Supplier warrants that the Software (subject to clause 4.2) will conform in all material respects to the specification, as detailed in Annex A of this Agreement. If the Subscriber notifies Supplier in writing of any material defect to the Software, Supplier shall – at Supplier's option – do one of the following:

- (a) remedy as soon as practicable the Software; or
- (b) where Supplier considers (acting reasonably) the defect is incapable of remedy using commercially reasonable efforts, terminate this Agreement immediately by notice in writing to the Subscriber and refund any pro-rata

proportion of the subscription fee paid by the Subscriber for the remaining term of this Agreement, as at the date of termination which shall – subject to clause 5.1 – constitute Supplier's sole liability, and the Subscriber's sole remedy, in respect of a breach of the warranty in this clause 4.1.

- 4.2 The Subscriber shall provide all the information reasonably required to assist Supplier in resolving the defect, including sufficient information to enable Supplier to re-create the defect.
- 4.3 The Subscriber acknowledges that software in general is not error free, and agree that the existence of non-material errors in the Software shall not constitute a breach of this Agreement.
- 4.4 The Subscriber accepts responsibility for electing to subscribe to the Software or the Support Services to achieve its intended results and acknowledge that the Software was not designed and produced to its individual requirements.
- 4.5 Each party warrants that it has the authority to execute this Agreement, and the Subscriber warrants that it has the ability to, and will, procure that any users of the Software will adhere to the terms of this Agreement.
- 4.6 All other conditions, warranties or other terms which might have effect between the parties or any third party, or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the maximum extent permissible by law, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or that use of the Software will be uninterrupted or error free.
- 4.7 The Subscriber warrants that it shall not bring any claim against the underlying suppliers to the Supplier.

## **5. Limits on Liability**

- 5.1 Nothing in this Agreement shall exclude either party's liability to any other person for:
  - (a) death or injury resulting from a party's negligence;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) any matter, liability for which a party cannot legally limit or exclude or attempt to limit or exclude.
- 5.2 Subject to clause 5.1, each party's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with

the performance or contemplated performance of this Agreement or any collateral contract shall be limited to 200% of the total subscription fee paid by the Subscriber since the commencement of this Agreement.

5.3 Subject to clause 5.1, the limitations and exclusions in this clause 5 shall apply to the fullest extent permissible by law.

## **6. Intellectual Property Rights**

6.1 The Subscriber acknowledges that all intellectual property rights in the Software shall belong to Supplier and its licensors, as appropriate. For the avoidance of doubt all content published on the Software or the Website, including reports, presentations, written content, graphics, images, marks, logos, sound or video clips, and Flash or Java animation, are protected by Supplier's copyrights or trademarks or those of Supplier's partners or licensors.

6.2 Supplier acknowledges that all intellectual property rights in any information or documentation provided by the Subscriber shall belong to the Subscriber (the "**Subscriber Materials**").

6.3 The Subscriber warrants that the use by Supplier of the Subscriber Materials shall not infringe the intellectual property rights of any third party.

6.4 Save as expressly stated in this Agreement, neither party shall:

- (a) acquire any interest in any of the intellectual property rights of the other party or their licensors;
- (b) use the trade marks or brand names of the other party without the other party's prior written consent (not to be unreasonably withheld, conditioned or delayed); or
- (c) take any action which might invalidate the intellectual property rights owned by or licensed to the other party.

## **7. Confidential Information**

7.1 Supplier warrants that it will use the same standard of care and discretion as it employs with its own commercially sensitive information (but in no event less than reasonable care and discretion) to keep the Subscriber's information confidential.

7.2 Supplier shall only make copies of the Confidential information, or disclose the same to its employees, as is necessary for the performance of its obligations.

7.3 Subject to 7.2, Supplier shall not make any disclosure of the Confidential

Information without the written agreement of the Subscriber.

7.4 The definition of “Confidential Information” includes any information included in the forms within the Software, by the Subscriber, unless that information:

- (a) was already known to the Supplier;
- (b) has become generally known to the public through no wrongful act or breach of these terms by the Supplier;
- (c) has been rightfully received by the Supplier from a third party without restriction on disclosure and without, to the knowledge of the recipient, a breach of an obligation of confidentiality running directly or indirectly to the Subscriber;
- (d) has been disclosed pursuant to a requirement of a governmental agency, stock exchange regulatory authority, or is required to be disclosed by operation of law; or
- (e) is independently developed by the Supplier without use, directly or indirectly, of the Confidential Information received from the Subscriber.

7.5 The Subscriber undertakes to change its password immediately on being granted access to the Software, and to set and maintain passwords for all individuals with access to the Software. Passwords changed or set by the Subscriber shall not be disclosed to Supplier unless required in accordance with clause 7.2. The Subscriber shall be responsible for ensuring that all such passwords are set up and maintained in compliance with the Subscriber's password policy

7.6 For the purposes of marketing or publicising or selling the Software we may wish to disclose current and past subscribers to the Software on our website and in our other marketing material, and may identify you by name and your corporate logo for this purpose. You may rescind your permission to use your corporate logo by advising us in writing within 21 days of subscription.

## **8. Data Protection**

8.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. The “**Data Protection Legislation**” means the UK Data Protection Act 2018 and the General Data Protection Regulation 2016/679.

8.2 The Supplier shall comply with the data controller obligations, as detailed in the Data Protection Legislation, in carrying out its obligations under this Agreement. For further information, please refer to the Supplier's privacy notice.

## **9. End User Contributions**

9.1 The Subscriber shall procure that all users of the Software comply (and warrants that all such users shall comply) with this Agreement.

## **10. Indemnities**

10.1 The Subscriber hereby indemnifies Supplier (and shall keep Supplier indemnified) against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Supplier arising out of, or in connection with, (in any whatsoever):

- (a) any and all threatened and/or actual claims against Supplier by users;
- (b) a failure by the Subscriber to use the Software in accordance with clause 1 and/or to comply with any other term of this Agreement;
- (c) any breaches of the warranty contained in clause 4;
- (d) any claim or action threatened or brought against Supplier alleging that Supplier's use of materials provided by the Subscriber (or any part thereof) in accordance with the terms of this Agreement infringes the intellectual property rights of a third party; and/
- (e) any breach (or any breach alleged by a third party) of any Data Protection Legislation by the Subscriber.

10.2 Nothing in this clause 10 shall restrict or limit the indemnified party's general obligation at law to mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under this clause 10.

10.3 For the avoidance of doubt, liability under the indemnities in this clause 10 is not limited under clause 5.2.

## **11. Termination**

11.1 Either party may terminate this Agreement at any time on written notice to the other:

- (a) is in material or persistent breach of any of the terms of this Agreement and either that breach is incapable of remedy, or the other party fails to remedy that breach within 30 Business Days after receiving written notice requiring it to remedy that breach; or

- (b) is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction or if made vexatiously), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.

11.2 Termination by either party shall be without prejudice to any other rights or remedies of that party accrued prior to termination.

11.3 On termination or expiry of this Agreement for any reason:

- (a) all rights granted to the Subscriber under this Agreement shall cease;
- (b) the Subscriber shall cease all activities authorised by this Agreement;
- (c) the Subscriber shall immediately pay to Supplier any sums properly due to Supplier under this Agreement, unless the Agreement has been terminated by the Subscriber;
- (d) each party will return to the other party or destroy all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information; and
- (e) each party will erase all the other party's Confidential Information from its computer systems to the fullest extent possible (provided Supplier may keep Confidential Information contained in the Software to assist with re-subscription unless notified by the Subscriber in writing that this should be deleted).

## **12. Force Majeure**

12.1 No party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from an act of God, war, famine, strikes, earthquake or other natural disaster. For the avoidance of doubt, nothing in this clause 12 shall excuse the Subscriber from any payment obligations under this Agreement.

## **13. Assignment**

13.1 The Subscriber shall not be entitled to novate its rights and obligations under this

Agreement at any time, subject to the prior written consent of Supplier, such consent not to be unreasonably withheld or delayed; however, the Supplier shall be entitled to do so.

13.2 Without limitation, consent from Supplier to assignment by the Subscriber may be conditional on:

- (a) Supplier being satisfied there is no material risk of the infringement of Supplier's intellectual property rights; and/or
- (b) the assignee agreeing to pay all additional charges for training and support and maintenance arising by virtue of the transfer; and/or
- (c) the assignee entering into a contract with Supplier agreeing to be bound by the terms and conditions of this Agreement as if it were the original Subscriber.

13.3 Supplier shall have the right to sub-contract its obligations under this Agreement to such other organisation and/or individual as it may notify to the Subscriber in writing from time to time.

#### **14. Anti-Bribery**

14.1 Neither party shall engage in any activity, practice or conduct which would constitute or result in an offence by either party under applicable anti-bribery laws or regulations, including the Bribery Act 2010 (the "**Bribery Act**").

14.2 Each party shall devise, implement and enforce its own written anti- bribery policies and procedures constituting adequate procedures under the Bribery Act.

#### **15. Third Party Rights**

15.1 No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement.

15.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement.

#### **16. Notices**

Any notice required to be given pursuant to this Agreement shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this Agreement. Notices may be sent by first-class mail or email, provided that

emails are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed emails shall be deemed to have been received instantaneously on transmission, provided that they are confirmed as set out in this clause.

## **17. Entire Agreement**

17.1 This Agreement supersedes all prior agreements, arrangements and understandings between the parties relating to the subject matter of this Agreement.

17.2 The Subscriber agrees that, in entering into this Agreement, it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement. The Subscriber shall have no remedy in respect of any representation (whether written or oral) made to it on which it relied in entering into this Agreement.

## **18. Governing Law and Jurisdiction**

18.1 This Agreement shall be governed by and construed in accordance with English law and each party hereby submits to the exclusive jurisdiction of the English courts.

By proceeding with the subscription of GABI, the Subscriber enters into this Agreement.

## **Schedule 1**

### **Terms of Use**

Users of the Software shall treat all user login details for the Software as confidential. Users shall not:

- disclose any user login details for the Software to any third party; or
- allow any other person (including other users) to log into and/or use their account for the Software.

Where there is a print 'button' in or on (as applicable) the Software, users may use that button to print information from the Software. The resulting print-outs shall be used solely for the internal use of (as applicable) the Subscriber. Users shall not:

- print or download any other information from the Software;
- use any other content in, on and/or from (as applicable) the Software and/or the Support Services for any other commercial purpose without our prior, written consent.

Users shall retain all copyright notices in such print-outs as well as any copies thereof.

### **Content Standards**

The content standards below apply to user contributions to the Software. Users' shall ensure that their contributions comply with these content standards (which apply to each part of any contribution as well as to its whole) in both letter and spirit.

All contributions shall:

- be accurate (where it states facts);
- be genuinely held (where it states opinions); and
- comply with the law applicable in England and Wales and in any country from which it is posted, contributed, inputted and/or uploaded.

Contributions shall not:

- be defamatory of any person;
- be obscene, offensive, hateful or inflammatory;
- promote sexually explicit material;
- promote violence;
- promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
- infringe any copyright, database right or trade mark of any person;
- be likely to deceive any person;
- breach any legal duty owed to any person. For example, a contractual duty or a duty of confidence;

- promote, encourage (or otherwise induce the commission, preparation or instigation of) any unlawful or illegal activity;
- be in contempt of court;
- be threatening, abuse or invade another's privacy, or cause annoyance, inconvenience or needless anxiety;
- be likely to harass, upset, embarrass, alarm or annoy any other person;
- impersonate any person, or misrepresent your identity or affiliation with any person; or
- contain any advertising or promote any services or web links to other sites.

## **Annex A**

### **Software Subscription**

Access to the Software requires payment of the prevailing subscription fee notified on the Website at the time of purchase.

For the avoidance of doubt, payment of the subscription fee entitles the named company administrators one-time access to the question banks for the term of this Agreement of three hundred and sixty five (365) days commencing upon the date of purchase.

Company administrators have the facility to print and download all available stored information created by the use of the question banks during the term of this Agreement. Access to stored information after expiry of the term of this Agreement requires the purchase of a new subscription fee.

As the nature of use of the GABI tool is periodic, upon expiry of the subscription period under this Agreement, the stored information will be retained for the Subscriber to have available a period-on-period comparison (e.g. year-on-year) under a new subscription fee.

The Supplier may levy a charge if the named company administrator requests the download of stored information outside of the term of this Agreement. Printing of stored information outside of the term of this Agreement is not available.

## **Annex B**

### **Support services**

#### HELP DESK

Help desk support will be made available for the duration of the contract.

A telephone and email-based help desk (the "Help Desk") will be available during UK Working Hours (9am - 5pm). During Working Hours, the Help Desk will respond to queries as soon as practicable but will – in any event – provide an initial response within 4 Working Hours of receipt (which may be on the next Business Day if the query is received after 13:30 on a Business Day).

To deal with Help Desk queries outside of Working Hours, an automatic acknowledgement email will be sent in response to queries submitted by email and the Risk Coalition's standard SLA (as set out in the preceding paragraph) will apply.

The delivery of support will be by phone, online (e.g. using GoToMeeting) or an emailed response.

Contact details:

Email - [support@riskcoalition.org.uk](mailto:support@riskcoalition.org.uk)