Terms and Conditions of Use

(Client)

Welcome to www.finametrica.com ("Website"). This Website is owned and operated by FinaMetrica Pty Ltd (referred to as "FinaMetrica", "we", "us" or "our"), a company registered in Australia, ACN 081 638 271 whose registered office is at Suite 1703, Level 17, 227 Elizabeth Street Sydney, NSW 2000, Australia.

DESCRIPTION OF SERVICES

FinaMetrica provides a psychometric test of personal financial risk tolerance comprising the risk tolerance questionnaire, the demographic questionnaire, the scoring algorithms and the reports ("the Test") to individuals wishing to have an assessment made of their financial risk tolerance. The Test statistically compares your risk tolerance answers with the answers of a sample population of clients of financial advisors. The Test was designed to provide financial advisors with an objective starting point for discussions that will lead to a mutually agreed assessment of a client's financial risk tolerance. This assessment will, in effect, constitute your instructions to the advisor about the level of risk you would normally choose to take. FinaMetrica does not guarantee or represent that the Test assesses your current state of mind or will predict your future state of mind or behavior.

The Website PROVIDES access to and use of the Test.

This agreement including the FinaMetrica Privacy Policy below ("Agreement") between you and FinaMetrica sets forth the terms and conditions governing your (also referred to as "you") access to and use of this Website and the Test.

Your access to and use of this Website and the Test will indicate that you have read and understand this Agreement and accept its terms and conditions. DO NOT PROCEED TO ACCESS AND USE THE TEST UNTIL YOU HAVE CAREFULLY READ THE FOLLOWING. If you accept this Agreement, including all of its terms and conditions, please click on the "Accept" button. You may also wish to print and/or save a copy of this Agreement for your records. If you do not accept this Agreement, you will not be able to access and use the Test.

INTELLECTUAL PROPERTY

FinaMetrica is the owner or licensee of all the intellectual property rights in the materials, data and processes in the Test including without limitation all text, algorithms, content, source and object codes.

The Test is licensed, not sold. This Agreement only gives you some rights to access and use the Test. FinaMetrica reserves all other rights. In consideration of your acceptance of this Agreement, FinaMetrica grants to you a non-exclusive, non-transferable, non-assignable, terminable licence to use the Website to access and use the Test subject to the terms and conditions in this Agreement.

The Test also contains trade secrets of FinaMetrica, and you may not reverse engineer, decompile, decode, decrypt, disassemble the whole or any part of FinaMetrica's intellectual property rights or directly or indirectly allow or cause a third party to reverse engineer, decompile, decode, decrypt or disassemble the whole or any part of FinaMetrica's intellectual property rights except to the extent otherwise authorised by applicable law.

You may not modify, adapt, translate, rent, sublicense, assign, loan, resell for profit, distribute or network the Test or related materials, or create derivative works based upon the Test or any part thereof. You may not publish, create derivative works from, transfer or sell any information obtained from the Test or the website which hosts the Test.

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This Agreement does not limit any rights that FinaMetrica may have under trade secret, copyright, patent, trademark or other laws.

ACCESS TO TEST

In order to use the Test, you will require the necessary software, hardware and connection to the World Wide Web (WWW). You are responsible for installing, maintaining, and operating your software and hardware, and the associated WWW connections. FinaMetrica is not responsible for any problems caused to your software or hardware, including any virus or related problems associated with your use of the Test on your equipment. You agree at all times during the continuance of this Agreement to maintain and use appropriate virus-protection software on your equipment used to access our Website and the Test.

FinaMetrica does not guarantee that the Test will always be available or be uninterrupted. FinaMetrica accepts no liability for any failure to comply with this Agreement where such failure is due to circumstances beyond FinaMetrica's reasonable control.

You will need a username and password ("Logon") to access and use the Test. You agree to keep your Logon confidential to prevent unauthorized access to and use of the Test. Your Logon allows only a single risk tolerance test to be completed however you may use it subsequently to view your completed risk tolerance questionnaire and your risk tolerance report for a period of 12 months from the date you completed the risk tolerance questionnaire.

If you have received a Logon as a result of your financial advisor being licensed to use the Website and your advisor's licence to use the Website is terminated for any reason, you understand and agree that your licence to use the Website to access and use the Test will also be terminated.

MODIFICATION, SUSPENSION OR TERMINATION

FinaMetrica may, in its sole discretion, immediately issue a warning, temporarily suspend, indefinitely suspend or terminate your access to the Test, in whole or in part, until further notice, with immediate effect:

a. to periodically maintain or improve the Test;
b. if we are unable to verify or authenticate any information you provide to us;
c. if we believe that your actions may cause legal liability for you, our users or us;
d. to comply with any order, instruction or request of any government, or other competent judicial, administrative, or regulatory authority; or
e. if we believe that you are responsible for the unauthorized access of the Test or any infringement of FinaMetrica's Intellectual Property Rights.

FinaMetrica will endeavour, where possible to provide you with reasonable notice of such suspension or termination.

Whilst FinaMetrica will use its best endeavours to minimise disruption to the Test, unscheduled outages may occur from time to time.

FinaMetrica may, in its sole and absolute discretion, immediately terminate this Agreement and your licence to use the Test, without notice or liability, if we determine, acting reasonably, that:

- you have breached a term of this Agreement, and that breach is not remedied within thirty (30) days of you receiving a notice which requests that the breach be remedied; or
- your use of or access to the Test violates any applicable law or regulation or otherwise inhibits any other subscriber from using or accessing the Test or any other service offered by FinaMetrica on the Website.

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You agree that upon termination FinaMetrica may, but is not required to, delete all information related to your account and may bar your access to your account and the Test.

On termination of this Agreement for any reason, you must cease using FinaMetrica's intellectual property rights and must cease and prevent any access to the Test using your username and password.

We have no liability to you for any costs, losses or damages of any kind arising as a consequence of suspending or terminating your access to the Test.

In the event of suspension or termination, all restrictions imposed on you by this Agreement will survive.

DISCLAIMER AND LIMITATION OF LIABILITY

FinaMetrica does not warrant that the Test is free from bugs, viruses, errors, or other program limitations. FinaMetrica does not guarantee that the Test will be available for your use at the times or locations of your choosing.

EXCEPT AS SET OUT BELOW, FINAMETRICA EXCLUDES ANY:

1. CONDITION OR WARRANTY WHICH WOULD OTHERWISE BE IMPLIED IN THIS AGREEMENT, RELATING IN ANY WAY TO THIS WEBSITE AND/OR THE TEST (TO THE EXTENT PERMITTED BY LAW);
2. LIABILITY FOR ANY LOSS OR DAMAGE, WHETHER IN CONTRACT, TORT (INCLUDING FOR NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE, EVEN IF FORESEEABLE ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. IN PARTICULAR, FINAMETRICA WILL NOT BE LIABLE TO YOU OR ANYONE ELSE FOR ANY:

    A. LOSS OF PROFITS, SALES, BUSINESS OR REVENUE
    B. BUSINESS INTERRUPTION
    C. LOSS OF ANTICIPATED SAVINGS
    D. LOSS DUE TO UNAVAILABILITY OF SYSTEMS
    E. LOSS OF DATA
    F. LOSS OF BUSINESS OPPORTUNITY, GOODWILL OR REPUTATION
    G. ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE

    ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, YOUR ACCESS TO OR USE OF THIS WEBSITE AND/OR THE TEST, OR YOUR RELIANCE ON THE INFORMATION AVAILABLE ON OR THROUGH THIS WEBSITE AND/OR THE TEST.

Nothing in this Agreement excludes or limits liability for death or personal injury arising from negligence, or fraud or fraudulent misrepresentation, or any other liability that cannot be lawfully excluded.

Where any legislation implies any condition or warranty into your use of or any arrangement arising out of your access to or use of this Website and/or the Test and that legislation prohibits exclusion of that condition or warranty, then that condition or warranty is included to the extent that such condition or warranty cannot be lawfully excluded.

TO THE EXTENT PERMITTED BY LAW, OUR LIABILITY FOR BREACH OF ANY EXPRESS PROVISION OF THIS AGREEMENT OR ANY NON-EXCLUDABLE CONDITION OR WARRANTY IS LIMITED TO THE RE-SUPPLY OF OUR SERVICES.
TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL FINAMETRICA'S AND/OR ITS REPRESENTATIVES TOTAL LIABILITY TO YOU AND/ OR TO A THIRD PARTY FOR ANY AND ALL CLAIMS OR DAMAGES UNDER THIS AGREEMENT FOR ANY CAUSE WHATSOEVER (INCLUDING NEGLIGENCE) EXCEED THE TOTAL AMOUNT PAID BY YOU OR BY A THIRD PARTY ON YOUR BEHALF FOR THE TEST IN THE PREVIOUS 12 MONTHS.

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The limitations of damages set forth above are fundamental elements of the basis of the bargain between FinaMetrica and you. FinaMetrica would not be able to have provided this licence without such limitations.

USE AND LIMITATIONS OF REPORT

FINAMETRICA IS NOT ENGAGED IN RENDERING INVESTMENT OR FINANCIAL ADVICE, AND THE RESULTS OR USE OF THE TEST MUST NOT BE REGARDED AS CONSTITUTING INVESTMENT OR FINANCIAL ADVICE. HISTORICAL ILLUSTRATIONS OF THE RESULTS OF INVESTMENT DECISIONS ARE PROVIDED TO FINANCIAL ADVISERS MERELY FOR EDUCATIONAL PURPOSES FOR CLIENTS AND SHOULD NOT BE REGARDED AS A PREDICTION OR GUARANTEE OF ANY FUTURE RESULTS.

If your financial adviser has arranged for you to have access to the Test, you agree and acknowledge that you will discuss the Test's reports ("Reports") with your financial adviser and should you consider that the Reports are inaccurate, you will draw this to your financial adviser's attention.

Your financial adviser will need to obtain your consent in using and relying on the assessment of your financial risk tolerance resulting from discussion of the Reports and you agree that you will indicate your informed consent by signing off on the risk tolerance report and any notes and adjustments, which together constitute the assessment of your personal financial risk tolerance. Your sign-off constitutes your instructions to your financial adviser about the level of risk that you would normally choose to take.

You agree to generally comply with the instructions and materials provided by FinaMetrica for the use of the Test.

You acknowledge and agree that FinaMetrica may use the risk tolerance and demographic data that you supply for research and to further develop the Test and may combine this data with similar data from other sources PROVIDED THAT ANY INFORMATION WHICH COULD IDENTIFY YOU PERSONALLY HAS BEEN REMOVED FROM THE DATA.

FinaMetrica will use the email address provided for you when you were registered to use the Website to send you notices concerning the Test and your use of the Test. You agree that you will accept all electronic communications from FinaMetrica at your email address and will not make any claims against FinaMetrica if you do not receive any such communications. You agree to notify FinaMetrica promptly if your email address changes.

PRIVACY

The terms and conditions in this Agreement must be read in conjunction with FinaMetrica's Privacy Policy which is available by clicking here *http://www.riskprofiling.com/privacy*.

Please click here to see the Privacy Statement (*http://www.riskprofiling.com/privacy1*) for clients of financial advisers or members of the public using the Test.

LINKED WEB SITES

This Website may contain links to other web sites ("Linked Web Sites"). FinaMetrica is not responsible for the content or privacy practices associated with Linked Web Sites. Our links with Linked Web Sites should not be construed as an endorsement, approval or recommendation by us of the owners or operators of those Linked Web Sites, or of any information, graphics, materials, products or services referred to or contained on those Linked Web Sites, unless and to the extent stipulated to the contrary. Such Linked Web Sites are visited at your own risk.

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INDEMNIFICATION

You release and indemnify us, our affiliates, officers, directors, employees, agents and contractors ("Those Indemnified") from and against all loss, actions, proceedings, claims, demands, costs, expenses (including without limitation legal fees) and damages which may be incurred or suffered by or instituted against any of Those Indemnified arising from your failure to comply with this Agreement, or relating or arising in any way out of any services or advice alleged to have been rendered or not rendered by or on behalf of your financial advisor to you.

SPECIFIC WARNINGS

Details contained in this Agreement have been prepared in accordance with the laws of New South Wales, Australia and may not satisfy the laws of any other country. We do not warrant that the details of this Agreement will satisfy the laws of any other country. It is your responsibility to determine whether these details satisfy the laws of the jurisdiction where you reside (if that jurisdiction is outside Australia) and if the details do not satisfy the laws of your jurisdiction, you may not access and use this Website and the Test.

You must take your own precautions to ensure that the process by which you access this Website does not expose you to the risk of viruses, malicious code or other forms of interference that may damage your own equipment. For the removal of doubt, we do not accept responsibility for any interference or damage to your own equipment or any equipment belonging to a third party that arises in connection with your use of this Website.

You acknowledge that despite all reasonable precautions on our part, there is a risk of unauthorised access to, or alteration of, your transmissions or to data or information contained on your equipment or on this Website. We do not accept responsibility or liability of any nature for any such losses that you may sustain as a result of such activity.

FinaMetrica 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 software or hardware, data or other proprietary material due to your use of our Test or to your downloading of any content on it, or on any website linked to it.

You must not misuse the Test by knowingly introducing viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful. You must not attempt to gain unauthorised access to the Test, the server on which the Test is stored or any server, equipment or database connected to the Test. You must not attack the Test via a denial-of-service attack or a distributed denial-of service attack. In the event of such a breach, your right to use the Test will cease immediately.

SECURITY OF INFORMATION

Unfortunately, no data transmission over the Internet can be guaranteed as totally secure. Whilst we strive to protect such information, we do not warrant and cannot ensure the security of any information that you transmit to us. Accordingly, any information that you transmit to us is transmitted at your own risk. Nevertheless, once we receive your transmission, we will take reasonable steps to preserve the security of such information.

GENERAL PROVISIONS

You acknowledge that this Agreement is a complete statement of the agreement between you and FinaMetrica regarding your access to and use of the Website and the Test, and that there are no other prior or contemporaneous understandings, promises, representations, or descriptions regarding this regarding this Agreement.

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The representatives of the FinaMetrica are not authorized to make modifications to this Agreement, or to make any additional representations, commitments, or warranties binding on the FinaMetrica, other than in writing signed by an officer of the FinaMetrica. Accordingly, such additional statements are not binding on the FinaMetrica and you should not rely upon such statements.

We accept no liability for any failure to comply with this Agreement where such failure is due to circumstances beyond our reasonable control.

If we waive any rights available to us under this Agreement on one occasion, this does not mean that those rights will automatically be waived on any other occasion.

If any provision or part provision of this Agreement is invalid, unenforceable or illegal for any reason, then it shall be deemed modified to the minimum extent necessary to make it valid, enforceable and legal. If such modification is not possible, the relevant provision or part provision shall be deemed omitted and the remaining provisions will continue in full force and effect and the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible achieves the intended commercial result of the original provision.

This Agreement is deemed entered into at Sydney, Australia and binding on the parties by you clicking “Accept” and shall be construed as to its fair meaning and not strictly for or against either party.

The Agreement, any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), is to be governed by and interpreted in accordance with the laws of New South Wales, Australia and the parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia as regards any dispute or claim or matter arising under this Agreement or in connection with its subject matter or formation (including non-contractual disputes or claims).

You agree that this Agreement may not be construed adversely against us solely because we prepared it.

HOW TO CONTACT US

Notices and questions concerning the Website or your use of the Test, or any aspect of this Agreement including the Privacy Statement may be directed to FinaMetrica Pty Ltd at Suite 1703, Level 17, 227 Elizabeth Street Sydney, NSW 2000, Australia, or by emailing us at info@finametrica.com.

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