



General Terms of Use

February 2023



Notitia

Our Relationship with You

1. We will perform the Services using reasonable skill and care.
2. We will provide the Services to you as an independent contractor and not as your employee, agent, partner or joint venturer. Neither you nor we have any right, power or authority to bind the other.
3. We will not assume any management responsibilities in connection with the Services. We will not be responsible for the use or implementation of the output of the Services.

Your Responsibilities

4. You shall assign a qualified person to oversee the Services. You are responsible for all management decisions relating to the Services, the use or implementation of the output of the Services and for determining whether the Services are appropriate for your purposes.
5. You shall provide (or cause others to provide) to us, promptly, the information, resources and assistance (including access to records, systems, premises and people) that we reasonably require to perform the Services.
6. To the best of your knowledge, all information provided by you or on your behalf ("Client Information") will be accurate and complete in all material respects. The provision of Client Information to us will not infringe any copyright or other third-party rights.
7. We will rely on Client Information made available to us and, unless we expressly agree otherwise, will have no responsibility to evaluate or verify it.
8. You shall be responsible for your personnel's compliance with your obligations under this Agreement.

Our Reports

9. Any information, advice, recommendations or other content of any reports, presentations or other communications we provide under this Agreement ("Reports"), other than Client Information, are for your internal use only (consistent with the purpose of the particular Services).
10. You may not disclose a Report (or any portion or summary of a Report), except:
 - (a) to your lawyers (subject to these disclosure restrictions), who may use it only to give you advice relating to the Services,
 - (b) to the extent, and for the purposes, required by subpoena or similar legal process (of which you will promptly notify us), or
 - (c) to other persons (including your affiliates) with our prior written consent, who have executed our access letter, who may then use it only as we have specified in our consent, or
 - (d) If you are permitted to disclose a Report (or a portion thereof), you shall not alter, edit or modify it from the form we provided.
11. You may incorporate into your internal documents any summaries, calculations or tables based on Client Information contained in a Report, but not our recommendations, conclusions or findings. If you then disclose such internal documents to anyone, you shall assume sole responsibility for their contents and you shall not refer to us in connection with them.

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12. You may not rely on any draft Report. We shall not be required to update any final Report for circumstances of which we become aware, or events occurring, after its delivery.

Limitations

13. Our duties and responsibilities shall be limited to those expressly set out in this letter and without limiting the generality of the foregoing, we shall not provide you with any accounting, legal, tax or other specialist advice or assume any responsibility for or liability in respect of any advice given to us or you by any other professional adviser.
14. You (and any others for whom Services are provided) may not recover from us, in contract or tort, under statute or otherwise, any amount with respect to any loss of profit, data or goodwill, or any indirect or consequential costs, loss or damage in connection with claims arising out of this Agreement or otherwise relating to the Services, whether or not the likelihood of such loss or damage was contemplated.
- a) If the Competition and Consumer Act 2010 (Cth), the Corporations Act 2001 or any other legislative provision prohibits or otherwise precludes the restriction, modification or exclusion of any statutory condition, warranty, guarantee, right, remedy or other benefit, Sections 16, 17 and 18 do not restrict, modify or exclude it. Unless prohibited by law, no term, condition or warranty is implied except as expressly provided in this Agreement.
- b) If our liability is not limited by a scheme approved under professional standards legislation, you (and any others for whom Services are provided) may not recover from us, in contract or tort (including negligence), under statute or otherwise, aggregate damages (including interest and costs) in excess of ten (10) times the fees actually paid for the Services that directly caused the loss in connection with claims arising out of this Agreement or otherwise relating to the Services.
- c) If a term is implied into this Agreement by law, which cannot be excluded, you agree that in the event that we breach the term we may, in our absolute discretion and to the extent it is allowed by law, choose either to re-supply the Services or pay you the cost of having the Services re-supplied.
15. If we are liable to you (or to any others for whom Services are provided) under this Agreement or otherwise in connection with the Services, for loss or damage (including interest and costs) to which any other persons have also contributed, our liability to you shall be several, and not joint, with such others, and shall be limited to our fair share of that total loss or damage which is agreed between us or ascribed to us by a court or tribunal of competent jurisdiction based on our contribution to the loss and damage relative to the others' contributions. No exclusion or limitation on the liability of other responsible persons imposed or agreed at any time shall affect any assessment of our proportionate liability hereunder, nor shall settlement of or difficulty enforcing any claim, or the death, dissolution or insolvency of any such other responsible persons or their ceasing to be liable for the loss or damage or any portion thereof, affect any such assessment.
16. The limitations in Section 18 will not apply to losses or damages caused by our negligence or fraud.

Indemnity

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17. Notitia and or its agents/representatives/employees will not take any responsibility for any taxation, legal or other advice you receive. Notitia will base its views and opinions solely on the information that you elect to provide it with. Notitia will not seek to independently verify and / or audit that or other information.
18. You hereby unconditionally and irrevocably agrees to indemnify Notitia and its related companies and their servants or agents / representatives and to hold them harmless from and against all loss, damages, demands, claims, costs and legal expenses of whatsoever kind and nature to which any or all of them may become subject or may suffer which arise from or are connected with any matter or thing relating to the provision of services by Notitia..
19. This indemnity, however, expressly excludes any indemnification in relation to any material negligent or fraudulent acts or omissions of Notitia and its related companies and their servants or agents / representatives and limited by liability in respect of clauses 13 & 14.

Intellectual Property Rights

20. We may use data, software, designs, utilities, tools, models, systems and other methodologies and know-how ("Materials") that we own or license in performing the Services. Notwithstanding the delivery of any Reports, we retain all intellectual property rights in the Materials (including any improvements or knowledge developed while performing the Services), and ownership of any working papers compiled in connection with the Services (but not Client Information reflected in them).
21. Upon payment for the Services, you may use any Materials included in the Reports, as well as the Reports themselves as permitted by this Agreement.

Confidentiality

22. Except as otherwise permitted by this Agreement, neither of us may disclose to third parties the contents of this Agreement or any information provided by or on behalf of the other that ought reasonably to be treated as confidential and/or proprietary. Either of us may, however, disclose such information to the extent that it:
 - (a) is or becomes public other than through a breach of this Agreement,
 - (b) is subsequently received by the recipient from a third party who, to the recipient's knowledge, owes no obligation of confidentiality to the disclosing party with respect to that information,
 - (c) was known to the recipient at the time of disclosure or is thereafter created independently,
 - (d) is disclosed as necessary to enforce the recipient's rights under this Agreement, or
 - (e) must be disclosed under applicable law, legal process or professional regulations.
23. Either of us may use electronic media to correspond or transmit information and such use will not in itself constitute a breach of any confidentiality obligations under this Agreement.

Data Protection

24. In respect of the Scope of Works, we may collect, use, transfer, store or otherwise process (collectively, "Process") Client Information that can be linked to specific individuals ("Personal Data"). We will Process the Personal Data in accordance with our Privacy Policy, applicable law and professional regulations, including (without limitation) the Privacy Act 1988 (Cth) and the Australian Privacy Principles under that Act. We will require any service provider that Processes Personal Data on our behalf to adhere to such requirements.
25. You warrant that you have the authority to provide the Personal Data to us in connection with the performance of the Services and that the Personal Data provided to us has been processed in accordance with applicable law.

Fees and Expenses Generally

26. You shall pay our professional fees and specific authorized expenses in connection with the Services as detailed in the applicable Statement of Work. You shall also reimburse us for other authorized expenses incurred in performing the Services. Our fees are exclusive of taxes or similar charges, as well as customs, duties or tariffs imposed in respect of the Services, all of which you shall pay (other than taxes imposed on our income generally). You shall pay our invoices within 14 days of the billing date. We shall issue our invoices to you or as you may direct. If you direct us to issue an invoice to another party, you shall remain responsible for payment until our invoice is paid in full. Accounts may be paid by electronic funds transfer, internet banking or cheque. Credit card payments are not accepted.
27. We may charge additional professional fees if events beyond our control (including your acts or omissions) affect our ability to perform the Services as originally planned or if you ask us to perform additional tasks.
28. If we are required by applicable law, legal process or government action to produce information or personnel as witnesses with respect to the Services or this Agreement, you shall reimburse us for any professional time and expenses (including reasonable external and internal legal costs) incurred to respond to the request, unless we are a party to the proceeding or the subject of the investigation.

Force Majeure

29. Neither you nor we shall be liable for breach of this Agreement (other than payment obligations) caused by circumstances beyond your or our reasonable control.

Term and Termination

30. This Agreement applies to all Services performed at any time (including before the date of this Agreement).

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31. We may terminate this Agreement, or any particular Services, immediately upon written notice to you if we reasonably determine that we can no longer provide the Services in accordance with applicable law or professional obligations.
32. You shall pay us for all work-in-progress, Services already performed, and expenses incurred by us up to and including the effective date of the termination of this Agreement. Payment is due within 14 days following receipt of our invoice for these amounts.

Governing Law and Dispute Resolution

33. This Agreement, and any non-contractual obligations arising out of this Agreement or the Services, shall be governed by, and construed in accordance with, the laws of Victoria. We both agree and irrevocably submit to the exclusive jurisdiction of the Courts of that state or territory.
34. If there is a dispute relating to the Services or this Agreement, the parties must submit the dispute to mediation before having recourse to any other dispute resolution process. Written notice of the dispute will be given for it to be submitted to mediation before a mediator chosen by the parties or, where the parties cannot agree, by the Australian Disputes Centre (ADC). The parties will use their best endeavors to settle the dispute promptly. The mediation will be conducted in accordance with the ADC Mediation Guidelines to the extent that they do not conflict with the provisions of this Section. If the dispute is not resolved within 30 days after notice of the dispute, the mediation will terminate unless the parties otherwise agree.

Miscellaneous

35. This Agreement constitutes the entire agreement between us as to the Services and the other matters it covers, and supersedes all prior agreements, understandings and representations with respect thereto, including any confidentiality agreements previously delivered.
36. We may use your name publicly to identify you as a client, but we may refer to you in connection with the Services only if, in doing so we do not disclose any of your confidential information, or it is a matter of public knowledge that we are providing them (or have provided them).
37. You represent that the person signing this Agreement on your behalf is expressly authorised to execute it and to bind you and any of your affiliates or others for whom Services are performed to its terms.
38. Both of us may execute this Agreement (and modifications to it) by electronic means. Both of us must agree in writing to modify this Agreement.
39. If there is any inconsistency between provisions in different parts of this Agreement, those parts shall have precedence as follows (unless expressly agreed otherwise): (a) the Cover Letter, (b) (b) these General Terms and Conditions, and (c) other annexes to this Agreement.
40. Neither of us may assign any of our rights, obligations or claims under this Agreement.