

Terms and Conditions of Use of Governance Intelligence® Diagnostic

These Terms and Conditions are provided by Enterprise Care Pty Ltd (ACN 089 132 507) (**Enterprise Care, we, us, or our**) and govern the use of the **Governance Intelligence® Materials (Materials** as defined below) by, yourself and or the provision of the **Services** (as defined below) to, a Client, Customer, Client or Customer User, or Member (**Client/Customer, you or your**). Enterprise Care is the creator and owner of the Materials. The Materials may be provided to you directly by Enterprise Care or indirectly by a **Partner or User** under licence from Enterprise Care.

By using the Materials you agree to be bound by these Terms and Conditions. If you do not agree to be bound by these Terms and Conditions, you must stop using the Materials.

Enterprise Care may amend these Terms and Conditions from time to time. If any amendments are made, they will be effective immediately upon the forwarding of the Materials. If you continue to use the Materials after the Terms and Conditions are amended, you agree to be bound by the amended Terms and Conditions.

1. Definitions

Client or Customer means a person or an organisation that has engaged Enterprise Care or a Partner or Licensed Party to supply the Services, or associated with an organisation and or Partner or Licensed Entity;

Client or Customer User means a person usually, but not exclusively, an employee of the Client or Customer, who is permitted to access and use the **Governance Intelligence® Diagnostic**;

Governance Intelligence® means, but is not limited to, the online diagnostic tool created and developed by Enterprise Care, offering Whole-of-Organisation governance perspective, the graphics and the embedded logic within the Materials;

Governance Intelligence® Diagnostic means any individual Audit offered directly by Enterprise Care or indirectly through a Partner or Licensed Party;

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not, registrable, registered or patentable;

Materials means the Governance Intelligence® Diagnostic, graphics and embedded logic in all associated works including but not limited to, PowerPoints, workshop sessions, draft and final reports;

Partner means an advisor to a client or customer who offers their services in conjunction with the Governance Intelligence® Diagnostic;

Partner or Licensed Party means a person authorised by Enterprise Care to offer the Materials and the Services;

Report means the report prepared by Enterprise Care and including any or all of the graphics, commentary, and the embedded logic and incorporating the information obtained from the Client or Customer and all Responses, and provided to the Partner or Licensed Party User and or Client or Customer;

Responses means the completed responses to the Governance Intelligence® Diagnostic; and

Services means the provision of services including the subsequent Report(s) and all connected work.

2. Terms of Use

2.1 Background

The Materials are provided to you for the purpose of facilitating the provision of the Services.

2.2 Use of the Materials

You are provided the Materials as an Enterprise Care Partner, and or licensed user and on the understanding of solely being to the benefit of you, the Client and or Customer.

2.3 Intellectual Property Rights

You acknowledge and agree that Enterprise Care is the exclusive owner of the Intellectual Property Rights in the Materials. You shall not own any Intellectual Property Rights in the Materials or any other materials brought into existence by Enterprise Care for the purpose of bringing into existence the Materials.

Except as expressly authorised by these Terms and Conditions, you may not in any form or by any means, without our prior written permission:

- (a) adapt, reproduce, store, distribute, print, display, perform, publish or create derivative works from any part of the Materials, (other than for the purposes of, and subject to the conditions prescribed under, the Copyright Act 1968 (Cth) and similar legislation that applies in your location); or
- (b) commercialise any information, products or services obtained from any part of the Materials.

2.4 Trade Marks

The Materials contain trade marks (both registered and unregistered) owned or licensed by Enterprise Care (**Trade Marks**). If you use any of the Trade Marks in reference to our activities, products or services, you must include a statement attributing those Trade Marks to us (or, where applicable, to the relevant owner of that Trade Mark). You must not use any of the Trade Marks:

- (a) in or as the whole or part of your own trademarks;
- (b) in connection with activities, products or services which are not ours or our sponsors;
- (c) in a manner which may be confusing, misleading or deceptive; or
- (d) in a manner that disparages us, our sponsors or the information, products or services (including the Materials) of us or our sponsors.

2.5 Privacy

You agree that in the course of providing the Materials Enterprise Care may collect personal information, including your name, address, contact details, position description and employment information and other information reasonably required for the provision of the Materials. All personal information collected, used or disclosed in the course of your use of the Materials and the provision of the Services is handled in accordance with applicable law.

3. Liability

3.1 Exclusion of terms and warranties

To the full extent permitted by law, Enterprise Care expressly excludes all terms, representations and warranties that otherwise would be implied by law into these Terms and Conditions. If any legislation implies in these Terms and Conditions any term or warranty, imposes any statutory guarantee, or prohibits provisions in a contract excluding or modifying the application of or exercise of, or liability under, such a term, warranty or statutory guarantee, that term or warranty is deemed to be included in these Terms and Conditions or statutory guarantee apply (as the case may be).

3.2 Restriction of liability

Where any term or condition imposing liability is implied through the operation of any law, or statutory guarantee imposed, and that term, condition or statutory guarantee cannot be excluded, the liability of Enterprise Care for a breach of such a term or warranty will be limited, at the option of Enterprise Care, to any one or more of the following:

- (a) if the breach relates to goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of such goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and
- (b) if the breach relates to services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

3.3 Limitation of liability

If Enterprise Care is held or found to be liable to you for any matter relating to or arising in connection with these Terms and Conditions, whether based on an action or claim in contract, negligence, tort or otherwise, the maximum aggregate liability of Enterprise Care in respect of all claims made by you will be an amount equal to AUD\$10.00 regardless of whether those claims arise out of a single event or a number of different events.

3.4 No liability for consequential loss

Notwithstanding anything else in these Terms and Conditions, Enterprise Care expressly excludes liability for:

- (a) indirect, special, incidental, or consequential loss or damage which may arise in respect of this Agreement, the Service, the Materials or in respect of any equipment or property; and
- (b) loss of profit, business, revenue, goodwill or anticipated savings.

4. General provisions

4.1 Notices

Any notice required or contemplated by these Terms and Conditions is deemed to have been properly given if it is in writing, properly addressed and delivered personally, or mailed postage prepaid or by fax to the Client or Client User's principal place of business or last known address.

4.2 Governing law and jurisdiction

- (a) This document is governed by and construed under the law of the State of Victoria, Australia.
- (b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in Victoria, Australia.
- (c) By execution of this document, each party irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this clause in relation to both itself and its property.

4.3 Waivers

Any failure by a party to exercise any right under this document does not operate as a waiver. The single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

4.4 Severability

Any clause of this document which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining clauses of this document or the validity of that clause in any other jurisdiction.