

**PLEASE READ THE TERMS AND CONDITIONS OF THE FOLLOWING LICENCE AGREEMENT CAREFULLY BEFORE USING THE GOVERNANCE EVALUATOR TOOL. BY CLICKING THE "I AGREE" BUTTON PRESENTED IN THIS WINDOW BELOW, YOU ARE AGREEING TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS, EXIT THE TOOL.**

This Licence Agreement (**Agreement**) is between:

- GOVERNANCE EVALUATOR PTY LTD (ACN 112 374 759), a Company duly incorporated in the State of Victoria in the Commonwealth of Australia with its principal business address at 86 Carr Street, Barwon Heads, VIC 3227, Australia, e-mail sales@governanceevaluator.com ("**Governance Evaluator** or **we** or **us** ")

and

- You

## **Background**

- A. You are a member of a board of a body corporate, and either You or such body corporate has requested Governance Evaluator to grant to You a licence to access and use the Tool.
- B. Governance Evaluator has agreed to grant You such rights to access and use the Tool on the following terms and conditions in consideration for payment of certain fees by You or by such body corporate (as applicable).

## **It is agreed**

### **1. Definitions**

**Body Corporate** means the body corporate described in Recital A.

**Content** means any content made available by Governance Evaluator within, or in connection with, the Tool, including all instructional and other videos, user manuals, templates and fact sheets.

**Data** means any information provided or generated by You in connection with your use of the Tool, including any statistics, results and reports.

**Software** means any software code (including object code and source code) which runs or forms part of the Tool.

**Term** means a period of 12 months starting on the day on which You first agree to be bound by the terms and conditions of this Licence Agreement.

**Tool** means the online interactive program for testing, evaluating and educating in relation to, corporate regulatory compliance, marketed by us as the "Governance Evaluator Tool".

### **2. Licence**

We grant You a non-exclusive licence to access and use in good faith the Tool in accordance with this Agreement for the Term. Such licence is granted in consideration of payment of the Fees and the assignment of rights under paragraph 0. Examples of permitted use of the Tool by You include accessing the Content online, and reproducing (including by downloading, saving or printing) results or reports generated by such use for use by You or the Body Corporate (if any).

You may only access and use the Tool via the unique username and password supplied to You by Governance Evaluator and You must keep such username and password, and other account details, safe, secure and secret, and not share them with anyone else, and prevent unauthorised use of the Tool.

You must not use the Tool in a way that in our opinion is inappropriate, abusive, illegal or otherwise, including in any way which:

- (a) may impair performance, corrupt content or otherwise reduce overall functionality of the Tool; or
- (b) interferes with our services to any other person or infringes or is likely to infringe the intellectual property rights of any other person.

You acknowledge that using the Tool does not give You or any other person any interest in any intellectual property rights which may subsist in the Tool, including in the Content or Software or any other content accessed or generated from such use.

### **3. Data and Privacy**

We must ensure that any personal information comprised in any Data is treated in accordance with the National Privacy Principles prescribed by the *Privacy Act 1988* (Cth), including ensuring that such personal information is kept safe and secure. We may use any Data in order to give effect to this Agreement and for marketing and research purposes in relation to the Tool and governance compliance, and You hereby assign to us any intellectual property rights that may subsist in the Data. We will, where possible, de-identify any personal information (including any sensitive information) comprised in the Data before it is used for such marketing and research purposes. The Data (possibly including personal information) may be stored on servers located overseas and managed by third parties. We will, so far as practicable, endeavour to ensure that those third parties manage the Data in accordance with this provision, but will not be responsible if they fail to do so. For further information about how we handle personal information comprised in any Data, please refer to our full privacy policy available on our website at [www.governanceevaluator.com](http://www.governanceevaluator.com), or if you wish to access and check for correctness any of your personal information that we hold, please contact us by email at sales@governanceevaluator.com.

### **4. No modification**

You must not modify or alter the Tool or reverse engineer, decompile or disassemble any Content or Software or otherwise reduce any Software to a human readable form (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be expressly permitted by this Agreement).

### **5. Termination**

Without prejudice to any other rights we may have under this Agreement or at law, we may terminate this Agreement without notice to You if You breach any provision of this Agreement or become bankrupt.

On termination of this Agreement, Governance Evaluator has no obligation to You or to any other person or entity to refund any Fees. All clauses which by their nature survive termination or expiry of this Agreement, including clauses 3, 4 and 5 and any rights or obligations which have accrued before this Agreement ends, will continue in accordance with their terms.

### **6. Maintenance, Disclaimer and Limitation of Liability**

We may from time to time, modify, enhance or update the Tool, without notice to you.

You acknowledge that you have relied on your own skill and judgement in deciding to use, and using, the Tool and acknowledge that no representation or warranty has been made or given by Governance Evaluator to any person or company on its behalf in relation to the currency and compliance of the Tool or any consequences or benefits to be obtained from the use of the Tool and any accompanying documentation. To the maximum extent permitted by applicable law:

- (a) the Tool is provided "as is" and "as available" and without representation or warranty of any kind;

- (b) Governance Evaluator disclaims all representations and warranties with respect to the Tool, whether express, implied or statutory, including any implied warranties of due care and skill, merchantability, satisfactory quality and fitness for any particular purpose; and
- (c) Governance Evaluator further disclaims any representation or warranty that:
  - (i) the use of the Tool will not infringe any third party rights;
  - (ii) the use of the Tool will be uninterrupted or error-free and that any service will continue to be made available or that defects in the Tool will be corrected;
  - (iii) the Tool will be free of hackers, other unauthorised access, denial of service attacks, viruses or other malicious or technologically harmful material or code; or
  - (iv) the Tool will be compatible or work with any third party software or services; and
- (d) Governance Evaluator is not responsible for any :
  - (i) failures or interruptions in the provision or operation of communications networks or Internet used to access or use the Tool;
  - (ii) failures or interruptions in the provision or operation of the Tool including any failures caused by Governance Evaluator's service providers;
  - (iii) data loss, wrong deliveries or non-deliveries suffered in connection within the Tool, including any loss or damage to any Data; or
  - (iv) use of the Tool by a third party (including any third party who accesses the Tool by using the unique username and password supplied to You by Governance Evaluator);
- (e) Governance Evaluator will not be liable for personal injury, or any incidental, special, indirect or consequential damages whatsoever, including damages for loss of profits, corruption or loss of data, failure to transmit or receive any data, business interruption or any other commercial damages or losses, arising out of or related to any use of, or inability to use, the Tool or any third party software in conjunction with use of the Tool or otherwise, however caused, regardless of the theory of liability (contract, tort or otherwise) and even if Governance Evaluator has been advised of the possibility of such damages; and
- (f) Governance Evaluator's total liability to You in respect of any and all liability in relation to the Tool and this Agreement is limited to \$100.

Where any legislation implies in these terms and conditions any term, condition or warranty, and also renders void any provision in a contract which purports to exclude or modify the application or exercise of, or liability under, such term, condition or warranty, such term, condition or warranty will be deemed to be included in these terms and conditions, however, Governance Evaluator's liability for any breach of such term, condition or warranty will be limited, at Governance Evaluator's option, to any one or more of the following:

- (a) if the breach relates to goods:
  - (i) the replacement of the goods or 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.

You agree to indemnify and keep indemnified Governance Evaluator and its officers, employees, agents and subcontractors against any and all claims, damages, costs, loss, liability or expense arising from or incurred in connection with any of the following:

- (a) any breach by You of this Agreement;
- (b) any use of the Tool by a third party to whom You have given access to the Tool; and
- (c) any use of the Tool by You (including any use in breach of any law).

## 7. General

You acknowledge and confirm that prior to clicking the "I ACCEPT" button presented in this window below You have carefully perused all provisions set out in this Agreement, and that this Agreement constitutes the entire understanding between You and Governance Evaluator and that it supersedes all proposals, representations and communications, oral or written, between Governance Evaluator and you in relation to your use of the Tool.

Any provision of this Agreement which is unenforceable or partly unenforceable in any jurisdiction is, where possible, to be severed to the extent necessary to make this Agreement enforceable. Any such severability does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a partial exercise of, a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

This Agreement is governed by the law in force in Victoria, Australia from time to time and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria, Australia and any courts which may hear appeals from those courts.