

Standard Terms of Business

These terms of business (“Terms”) apply to the engagement of Nexia ASR Pty Ltd and any associated entities (“NASR”) by you (“you”), both collectively referred to as the “parties”. These Terms and the Engagement Letter form the Contract (“Contract”) between the parties for the Services.

Engaging or continuing to engage NASR to provide its services, will confirm your acceptance of these standard terms.

1. Services

NASR will provide the Services described in the Engagement Letter.

Timescale

NASR will endeavour to carry out our obligations in accordance with the timescales set out in the Engagement Letter. However, unless both parties specifically agree otherwise in writing, the dates contained in the Engagement Letter are indicative dates intended for planning and estimating purposes only and are not contractually binding. Any estimates of time for completion of the Services are given on the assumption NASR receives co-operation and commitment from you. For the avoidance of doubt, NASR will not be liable for any failure or delay in performing the services if that failure or delay arises from anything beyond its control – including the untimely provision of information by you.

Changes to Services

Either of the parties may request changes to the Services as set out in the Engagement Letter. Both parties agree to work together to enable both parties to assess the impact of any requested changes on the cost, timing and any other aspect of the Services.

NASR Engagement Team

Where specific NASR partners and staff are named in the Engagement Letter, NASR will use reasonable efforts to ensure that these people are available to provide the Services. Where any changes are necessary, NASR will give you reasonable notice of the changes. Staff have been allocated to the engagement based upon NASR assessment of the levels of experience, skills and responsibility involved.

2. Information

You agree to provide in a timely fashion all information and documents reasonably required to enable NASR to provide the Services. Unless otherwise stated in the Engagement Letter, NASR will not independently verify the accuracy of such information and documents and will not be liable for any loss or damage arising from any inaccuracy or other defect in any information or documents supplied by you.

3. Fees and Payment

How fees will be calculated

NASR fees are calculated on the basis of time spent on the assignment by our partners and staff in accordance with hourly rates current at the time the services are performed. A schedule of rates for staff allocated to this engagement and/or rates for all NASR employees can be provided upon written request.

Unless otherwise stated, any total quantum of fees indicated in the Engagement Letter are indicative estimates only based upon the preliminary information provided by you and our experience with similar and/or your previous engagements. Any fees quoted are not fixed, unless otherwise stated, and NASR reserves the right to render fee invoices for an amount based upon time spent, greater than any quantum indicated in the Engagement Letter.

Performance

NASR’s performance is dependent on you carrying out your responsibilities as set out in this Contract and you providing all information reasonably requested by NASR in a complete and timely manner. Should this not occur, it may lead to an increase in fees depending upon the extent to which NASR has to perform more work or reschedule commitments to deliver the agreed Services. Alterations to the scope of Services or delays beyond the control of NASR may require a reallocation of engagement staff and a renegotiation of fees.

Expenses

All charges are exclusive of expenses unless the Engagement Letter states otherwise. You agree to pay NASR's reasonable travel, subsistence and document handling costs (photocopying, scanning and imaging, printing, fax and courier, etc) incurred in connection with the Services. Any special expense arrangements will be agreed and set out in the Engagement Letter.

Payment of invoices

NASR invoices will be issued on a monthly basis or as set out in the Engagement Letter. NASR reserves the right to issue invoices at more or less frequent intervals. All invoices will be due for payment as stipulated on the invoice but in no event greater than within fourteen (14) days of the date of the invoice. All invoices will be rendered with relevant client details and a summary of work performed. Detailed time records will not be provided on the invoice. Time detail may be requested in writing within fourteen (14) days of issue of invoice. Except where you are a consumer, as defined in section 3, Schedule 2 of the Competition and Consumer Act 2010 (Cth) ("Consumer") any dispute in relation to time will not be recognised unless notified within seven (7) days of receiving details of time incurred.

NASR retains the right to charge interest on invoices which are not paid by the due date. Interest will be calculated daily at a rate of 2% above the rate prescribed under the Penalty Interest Rate Act.

NASR reserves the right to recover all default costs and enforcement expenses in the event invoices are not paid by the due date and recovery action is necessary.

You agree that NASR will hold a general lien over all files, papers and documents belonging to you ("Documents") which are in NASR's possession as security for all outstanding amounts owed by you to NASR including without limitation unpaid invoices, interest, default costs and enforcement expenses ("Outstanding Amounts") until all Outstanding Amounts are paid in full to NASR.

GST

NASR's fees and charges referred to in the Contract are exclusive of GST, unless stated otherwise. Any applicable GST will be added to your bill, which you will be responsible for paying.

4. Term and Termination

Duration of Contract

This Contract will apply from the date of the Engagement Letter, or where specified, from the date of acceptance of the Contract as specified in the Engagement Letter ("Commencement Date"). This Contract will continue until it is terminated in writing by either party or in accordance with the terms set out below ("Term").

Termination

The Contract may be terminated by either party by providing written notice to the other party if the other party fails to remedy a material breach of these Terms within ten (10) days of receiving written notice of that breach from the other party.

If the Contract is terminated prior to completion of the Services, NASR shall be entitled to be paid for work that has been carried out or where expenses have been incurred.

5. Confidentiality

- 5.1 Subject to clause 5.2, both parties agree to take reasonable steps to maintain (within the respective organisations) the confidentiality of any proprietary or confidential information of the other. The NASR privacy policy is contained on the NASR website (www.nexia.com.au) or can be provided to you upon request. If you wish to provide third parties with copies of NASR reports, letters, information or advice, you must first obtain the written permission of NASR to disclose the document(s) or information. NASR also reserves the right to:-
- 5.1.1 set the terms on which those copies are given or used; or
 - 5.1.2 require the third party to enter into direct relationship with NASR.
- 5.2 Subject to section 275(7) of the *Personal Property Securities Act 2009* (Cth) ("PPS Act"), neither party will disclose information of the kind mentioned in section 275(1) of the PPS Act.

6. Exclusions and limitations of liability

- 6.1 NASR will use reasonable skill and care in the provision of the Services.
- 6.2 Except only for those rights and remedies that you have in respect of the Services under the Competition and Consumer Act 2010 (Cth) and similar state and territory laws applicable to Consumers and which cannot be lawfully excluded, restricted or modified:
- 6.2.1 all conditions, warranties and consumer guarantees, whether statutory or otherwise, are excluded in relation to the Services; and
- 6.2.2 NASR is not liable for any loss (including special, indirect or consequential loss, loss of profits, loss of business, loss of reputation, loss of goodwill, loss of opportunity arising or loss caused by the negligence of NASR) which you suffer, incur or are liable for in connection with supply of the Services under this Contract, except in accordance with clause 6.4).
- 6.3 If you are not a Consumer NASR's total aggregate liability to you for loss or damage under this Contract is limited (to the extent permitted by law) to an amount equal to three times its fees (excluding GST) rendered for providing the Services. Further NASR is not liable:
- 6.3.1 for any processing deficiency (in any system) that is caused (in whole or in part) by input data that contains any date that is ambiguous as to the year, or is otherwise inaccurate;
- 6.3.2 for any defect or deficiency in any system or service that is not developed or provided by NASR under this Contract. That includes (without limitation) your production and legacy systems and systems that receive data from systems produced by NASR; and
- 6.3.3 to the extent that you or any associates are responsible for an act or omission that contributed to the loss.
- 6.4 If you are a Consumer and the Services are not are not ordinarily acquired for personal, household or domestic purposes, NASR may, if it is fair or reasonable to do so, choose (in its absolute discretion) either to re-supply the Services or to pay you the cost of having the Services re-supplied.
- 6.5 This clause 6.5 and clause 6.6 only apply to the extent that clauses 6.3 and 6.4 do not apply. Where the Institute limitation of liability scheme ("Scheme") approved under the Professional Standards Act 2003 (Vic) ("Act") applies, if the reasonable cost of the Services NASR supplies:
- 6.5.1 is less than \$100,000, the total liability of NASR partners and employees to you is limited to 1,000,000; or
- 6.5.2 is \$100,000 or more, the total liability of NASR partners and employees to you is limited to ten (10) times the engagement fee up to a maximum cap for the category of service.
- Should you require further information on the operation of the Scheme in relation to this Contract, please ask us to provide you with information before completing this Contract.
- 6.6 In jurisdictions where the Act does not apply then the parties agree that NASR's liability is limited as if the Act applied.

7. Indemnity for Liability to third parties

- 7.1 You agree to indemnify NASR against all liabilities, claims, costs or expenses (including legal fees and disbursements) incurred by NASR in respect of any third party claim which is related to, arises out of, or is in any way associated with, this engagement. However, the indemnity does not apply to any costs, charges and expenses in respect of any matters which are finally determined to have resulted solely and directly from NASR's negligent or wilful acts or omissions.
- 7.2 You also agree to indemnify NASR, its partners, associates, employees, contractors and any other person who may be sought to be made liable in excess of the limit of liability described above in respect of any activity arising from or connected with the Contract in respect of any claim of whatever kind, including negligence, that may be made by any person and any costs and expenses that may be incurred by us.

7.3 Nexia holds the benefit of the indemnities in clauses 7.1 and 7.2 on trust for itself and its partners, employees and contractors.

8. PPS Law

8.1 For the purposes of this clause 8, “PPS Law” means:

- a) the PPS Act;
- b) any regulations made at any time under the PPS Act;
- c) any provision of the PPS Act or regulations referred to in (b) above;
- d) any amendment to any of the above, made at any time; or
- e) any amendment made at any time to any other legislation as a consequence of a PPS Law referred to in (a) to (d) above.

8.2 If at any time after the Commencement Date and during the Term:

8.2.1 NASR determines that a PPS Law applies, or will at a further date apply, to this Contract or any of the transactions contemplated by this Contract; and

8.2.2 in the reasonable opinion of NASR, the PPS Law adversely affects or would adversely affect the security position, or the rights of NASR under or in connection with this Contract or the Documents (as defined in clause 3 of this Contract), or compliance with such PPS Law is necessary or advisable for NASR to maintain a first priority perfected security interest in any Documents under applicable law, then you must, upon NASR’s request, cause this Contract and/or the security interest or ownership interests created under this Contract, to be registered with the applicable registry in accordance with and to the extent possible under such PPS Law and must cause all other filings and recordings necessary or advisable under such PPS Law and all such other action (including amending this Contract) required under such PPS Law to be effected and taken, in order to maintain, protect and perfect the respective right, title and interests of NASR thereunder.

8.3 You are liable for all and any costs and expenses arising as a result of actions taken pursuant to this clause 8.

9. General

Intellectual Property Rights

All copyright and other intellectual property rights in all materials and tools (including software and working papers), data, designs, models, methodologies, analysis frameworks, practices, ideas, concepts and techniques brought to the engagement or created in the course of the engagement of NASR shall remain and be irrevocably vested in NASR.

Severance

- (a) If a provision in these Terms is wholly or partly void, illegal or unenforceable, that provision or part must, to that extent, be treated as deleted from these Terms. This does not affect the validity or enforceability of the remainder of the provision or any other provision the remainder of these Terms.
- (b) Clause (a) above does not apply and has no effect if severance of the provision of these Terms in accordance with clause (a) materially affects or alters the nature or effect of the parties’ obligations under these Terms.

Variation

These terms may only be varied by written agreement of the parties.

Non-Solicitation of Personnel

During the Contract, and for six (6) months after it ends, you agree not to solicit for employment, or to independently contract the services of, any NASR partner, employee or contractor who is involved with performing the Services.

Miscellaneous

NASR will provide the Services as an independent contractor. Nothing shall be construed to create a partnership, joint venture or other relationship between the parties. No party has the right, power or authority to oblige or bind the other in any manner.

Governing Law & Jurisdiction

All aspects of the Services and the Contract are governed by, and construed in accordance with, the laws of the State of Victoria and the parties irrevocably submit to the exclusive jurisdiction of the Courts of that state or territory.

Dispute Resolution

If there is a dispute relating to the Services or this Contract, the parties will submit to mediation before having recourse to any other dispute resolution process. Written notice of the dispute must be given to the other party for it to be submitted to mediation before a mediator chosen by the parties or, where the parties cannot agree, by the Australian Commercial Disputes Centre (ACDC). The parties will use their best endeavours to settle the dispute promptly. The mediation will be conducted in accordance with the ACDC Mediation Guidelines to the extent that they do not conflict with the provision of this clause. If the dispute is not resolved within 60 days after notice of the dispute, the mediation will terminate.

Electronic Communication

NASR may communicate with you electronically. Electronically transmitted information cannot be guaranteed to be secure or error free and it can be adversely affected or unsafe to use. NASR will use commercially reasonable procedures to check for the most commonly known viruses before sending information electronically, but will not be liable to you or any associates in respect of any error or omission arising from or in connection with the electronic communication of information. You may elect, in writing, not to permit NASR to communicate electronically with you.

Contract

Sub-clauses (a) and (b) shall not apply to a Consumer.

- (a) These Terms:
 - (i) supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Services including, but not limited to, those relating to the performance of the Services or the results that ought to be expected from using the Services; and
 - (ii) override any quotes, invoices or other documentation exchanged between the parties whether or not such documents expressly provide that they override these Terms.
- (b) Unless NASR otherwise agrees in writing, these Terms are the only terms which shall apply to the Services supplied by NASR.
- (c) You agree that these Terms will in all circumstances prevail over your terms and conditions of purchase (if any).