

Terms of Use for Advisers

(Last updated 31 October 2018)

1. Preliminary

This Agreement is between YODAL PTY LTD ACN 608 966 445 (We and Us) and YOU

At Your request, We have agreed to provide You with access to the System. Your access to the System is provided by Us on the terms and conditions described in these Terms of Use which constitute the terms of our contractual relationship with you.

2. Definitions and Interpretation

2.1 Definitions

In these Terms of Use, unless the context or subject matter otherwise require:

Agreement means the agreement between You and Us for You to access the System, the terms of which are contained in these Terms of Use.

Claim means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, Right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent.

Client means a client of an Adviser for whom the Adviser Processes a Matter through the System, and who may be referred to You for the provision of legal advice.

Client Terms and Conditions means the terms and conditions regarding Your Client's use of the System.

Data means all information including Personal Information and Sensitive Information You provide to Us whether that information relates to You or Your Client (or a third party).

Document Fee means the Legal Fee and the Yodal Fee.

Force Majeure means the occurrence of an event or circumstances beyond the reasonable control of the party affected by it including (without limitation):

- (a) a war (declared or undeclared), insurrection, civil commotion, military action, or an act of sabotage;
- (b) a strike, lockout or industrial action, dispute or disturbance of any kind;
- (c) an act of a government;
- (d) an act of God; or
- (e) a storm, tempest, fire, flood, earthquake or other natural calamity.

Future Rights means jointly and severally all of those Rights (statutory and otherwise) comprised in the Intellectual Property Rights which may arise, be created, be granted or acquired in any way whatsoever in the future in respect of the System.

Idea means an idea which You may submit to Us as to how to improve the System, as defined in clause 3.2(c) of these Terms of Use.

Improvements means any improvement, modification, enhancement, derivative, application or use of the Intellectual Property Rights conceived, created or arising during or subsequent to Your access to and use of the System including all Future Rights.

Intellectual Property Rights means

- (a) jointly and severally any Rights as they relate to the Confidential Information, Template Documents, System, the copyright, the design Rights, the patent Rights, the eligible layout Rights, the Improvements, and the Future Rights;
- (b) all other Rights resulting from intellectual activity in the industrial, scientific, literary or artistic field; and
- (c) any application or Right to apply for registration of any of the Rights referred to in the subclause (a).

Legal Fee means the component of the Document Fee which is payable to the law firm that provides the Client with legal advice on the Template Documents.

Matter means each estate planning or other matter that is processed through the System to produce Template Documents.

Personal Information has the same meaning as 'Personal Information' contained in section 6 of the *Privacy Act 1988* (Cth).

Right includes a legal, equitable, contractual, statutory or other Right, power, authority, benefit, privilege, remedy, discretion or cause of action.

Sensitive Information has the same meaning as 'Sensitive Information' contained in section 6 of the *Privacy Act 1988* (Cth).

System means the document automation and production system known as Yodal to which You are granted access through acceptance of these Terms of Use.

Template Documentation means the documentation created by Us and provided to You and to Your Client as a result of You inputting Data into the System and **Template Documents** has the same meaning.

Terms of Use means these terms of use, as they may later be amended or supplemented by Us.

Yodal Fee means the component of the Document Fee which is payable to Yodal.

You means the person or persons, whether acting on behalf of an organisation or not, who has read, considered and accepted these Terms of Use and who has entered into the Agreement with Us.

3. **Terms of Use**

3.1 **Your use of the System**

- (a) You acknowledge and agree that We:
 - (i) do not provide legal advice or services;
 - (ii) are not a law firm; and
 - (iii) do not hold Ourselves out to be lawyers.
- (b) You acknowledge and agree that:
 - (i) Your role is to act as agent for Your Client to input Data into the System in order to produce the Template Documentation;
 - (ii) You will not provide legal advice to Your Client;
 - (iii) You will take all reasonable steps to satisfy Yourself as to the identity of Your Client before inputting Data into the System;



- (iv) With the consent of Your Client, You will select a lawyer to provide legal advice to Your Client. Only once a lawyer has provided legal advice will the Template Documentation be appropriate for Your Client's needs and be in a form which can be put in place as legal documents;
 - (v) We will only prepare Template Documentation which deals with Your Client's assets and affairs situated in Australia. If Your Client has property outside of Australia, You acknowledge that the Template Documents cannot deal with that property and that Your Client will need to seek legal advice in order to deal with the property;
 - (vi) Our Agreement is with You and not Your Client, and we have no contractual obligations to Your Client in relation to the Template Documents or their content; and
 - (vii) Your access to the System, is personal to You, and You must not give access to the System to any other person without Our written consent.
- (c) We will not send the Template Documents to You, Your Client or to your selected lawyer until:
- (i) Your Client has accepted the Client Terms and Conditions; and
 - (ii) You or Your Client has paid the Document Fee prescribed by Yodal.
- (d) You agree that You will only input accurate Data into the System on the direction of Your Client and that You will not provide Data that You know to be false, inaccurate, or misleading.
- (e) You acknowledge that if Your Client engages the lawyer to provide additional legal advice or services, beyond reviewing and finalising the Template Documents, then the lawyer may, at their discretion, decide to charge an additional fee to Your Client. If the lawyer chooses to do this then it will be on terms and conditions as agreed between the lawyer and Your Client with no involvement by Us.

3.2 *Our Intellectual Property*

- (a) You acknowledge that, subject to any licence agreements that We may have with third parties, ownership of the Intellectual Property Rights relating to the Template Documentation created through the System remains with Us.
- (b) You assign to Us all right, title and interest in the Data that You input into the System in order to create the Template Documentation.
- (c) If You submit an Idea to Us as to how to improve the System then disclosure of that Idea to Us is gratuitous and does not give rise to an obligation on Our part (fiduciary or otherwise) to attribute any copyright, moral rights or Intellectual property Rights of any nature to You or to provide You with any compensation for such Idea. Further, You will do all things necessary to assign any Intellectual Property Rights, including moral rights, which You may have in the Idea to Us on Our request.

3.3 *Use of the System for Legal Purposes only*

- (a) You acknowledge and agree that You will not use the System for any purpose that is illegal or unlawful.
- (b) If You breach this term then We may at Our sole discretion deliver such Data to a relevant law enforcement officer or government department.

3.4 *Internet Costs*

You are responsible for all internet charges for connecting to and using the System.

3.5 *Backup of Data*

- (a) We do not provide a backup service of the Data. You have the ability to do this yourself and therefore the responsibility and all liability in respect of this remains with You.
- (b) You acknowledge that We do not provide this backup service and that in order to account for the Data, You must put measures in place to back up the Data.



3.6 Passwords

You are responsible for all use of Your account(s) and protecting the confidentiality of Your password(s). We will suspend or change access to Your accounts within a reasonable time upon written notification by You that Your password has been lost, stolen or otherwise compromised.

3.7 Cannot Reverse Engineer

The System may not be reverse-engineered, modified, reproduced, republished, translated into any other language or computer language, re-transmitted in any form or by any means, resold or redistributed without Our prior written consent. You may not make, sell, offer for sale, modify, reproduce, display, publicly perform, import, distribute, retransmit or otherwise use the content in any way, unless expressly permitted to do so by Us in writing.

3.8 Retention of Records

We reserve the Right, in Our sole discretion, to delete Your personal files after one or both parties terminate this Agreement. It is Your sole responsibility to retain records of information used in conjunction with the System.

3.9 Use of Data

- (a) You allow Us to use the Data, but not Personal Information or Sensitive Information, in the course of Us promoting the System to potential other users.
- (b) You allow Us to use the Data, but not Personal Information or Sensitive Information, in the course of Us collating and applying the Data for Our internal use.

3.10 Restrictions on Use of the System

You shall not, in respect of Your use of the System:

- (a) encumber, sell, rent, lease, sublicense, or otherwise transfer Rights to the System to a third party; or
- (b) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the System.

3.11 No Reliance on Representation

- (a) You warrant that You have not relied on any representations made by Us which have not been stated expressly in these Terms of Use or in any document provided by Us.
- (b) To the extent that any representations are made in these Terms of Use, You acknowledge that You have been provided with sufficient time to verify the accuracy of such representations before entering into this Agreement.

4. System Availability

4.1 Remediating errors

- (a) You acknowledge that the System is not error or bug free and agree that You will use the System carefully and will not use it in any way which might result in any loss of Our or any third party's property or information.
- (b) We will make all reasonable efforts to ensure that any errors or bugs in the System are remedied in a reasonable and timely manner.

4.2 Availability of the System not guaranteed

- (a) We will make all reasonable efforts to ensure the availability of the System at all times, however, the System may require refinement and maintenance and so, availability cannot be guaranteed.
- (b) We will make all reasonable efforts to schedule planned refinements and maintenance, that will result in the System being unavailable, outside of normal business hours (Monday to Friday 9am-5pm).



- (c) If the System will not be available during normal business hours (Monday to Friday 9am-5pm) due to Our decision to perform maintenance to the System, We will attempt to provide reasonable notice to You of the unavailability of the System.

4.3 Change to System

- (a) We reserve the Right at Our sole discretion, to change the System, including, but not limited to access procedures, menu structures, commands, documentation and applications offered.
- (b) We may provide You with written notice of the changes to the System once they have been made.

5. Payment of Fees

5.1 Document Fee

- (a) The Document Fee is payable before any Template Documents are generated and the Matter can be progressed to a lawyer.
- (b) Once the Document Fee has been paid, the Yodal Fee which comprises part of the Document Fee, is immediately collected by Yodal.
- (c) Only when the law firm issues a tax invoice to the Client and notifies Yodal that such tax invoice has been issued, will Yodal pay the Legal Fee to that law firm.
- (d) If on review by the lawyer, the lawyer believes that the Template Documents that have been selected and paid for are wholly inadequate for Your Client's circumstances and we agree with the lawyer's assessment that the Template Documents are wholly inadequate the, We will refund the Document Fee.

6. Term and Termination

6.1 Term

The term of this Agreement shall commence on the date that You accept these Terms of Use and will continue until this Agreement is terminated in accordance with clause 6.2.

6.2 Termination

- (a) Either party may terminate this Agreement at any time upon 2 business day's written notice to the other party.
- (b) This Agreement will immediately and automatically terminate without notice if You fail to comply with any term or condition of these Terms of Use and such breach continues unremedied for a period of 7 days after We give notice to You that You are in breach of these Terms of Use.
- (c) Upon termination of this Agreement, We will remove from the System any Personal Information relating to You and Your use of the System including any username, passwords and Data. You acknowledge that We:
 - (i) will remove Your Data from the System including any username and passwords.
 - (ii) will retain any Personal Information relating to the Clients and that the Client's Personal Information, including copies of signed documentation uploaded to the System, will remain available for access by the Client pursuant to their direction to Us; and
 - (iii) have no liability at all for the deletion or loss of any Data.
- (d) Upon termination of this Agreement, You forfeit any paid, but unused, Subscription Fee.

6.3 Suspension and Termination

- (a) We reserve the Right, in Our sole discretion, to suspend or terminate Your access to the System for usage that We deem to be inappropriate or usage that breaches any of the terms contained in these Terms of Use.



- (b) Inappropriate usage includes but is not limited to, activities harmful to Us or the other users of the System, Our employees, Our business relationships or any other persons directly impacted by the System.

7. No Warranties

7.1 Our Warranties

Without limiting anything contained in these Terms of Use, to the maximum extent permitted by applicable law We give no warranty regarding or representation concerning the following:

- (a) that the System is free of inaccuracies, defects and errors;
- (b) that except as expressly provided by these Terms of Use, the System and Rights granted pursuant to these Terms of Use are provided on an "as is" basis without any representation, warranty or condition, whether express or implied, statutory, out of a course of dealing or usage, trade or otherwise including any implied warranty or condition of merchantable quality or fitness of any particular purpose or use;
- (c) the performance of the System;
- (d) the quality of the Template Documentation and any other documentation We produce;
- (e) any services provided to You or any other person;
- (f) access to the System by You;
- (g) the availability of the System to You;
- (h) the preservation of Data whether by way of "back-up" or any other means of storage in hard or soft copy;
- (i) the protection of Data whether by way of electronic protection or any other means; and
- (j) the prevention of corruption, destruction or disclosure of Data.

7.2 Your Warranties

You warrant that if you submit any Idea to Us that such Idea does not breach any third party's Intellectual Property Rights.

8. No Liability for Damage

- (a) We are under no liability to You or any other person, including but without limitation to Your Clients, a legal practitioner that uses the System and any other user of the System in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of the System, the use of the System or in respect of any other service provided pursuant to these Terms of Use or in respect of a failure or omission by Us to comply with Our obligations pursuant to these Terms of Use.
- (b) In any event, Our entire liability (if any) is limited to either:
 - (i) refunding the Document Fee paid to Us and which relates to the particular Matter associated with the damage; or
 - (ii) re-supplying the Template Documentation which relates to the particular Matter associated with the damage.

9. Indemnity

You agree to fully, effectually and promptly indemnify Us against any loss (either direct or indirect), damage or expense whatsoever which We may suffer or incur in respect of:

- (a) the use of the System;



- (b) the use of the Template Documentation generated by Us;
- (c) the suitability of the System for the circumstances of Your Client;
- (d) any claim by a Client, or any third party that the Template Documents produced by the System were deficient, faulty or otherwise inadequate
- (e) any breach by You of these Terms of Use; or
- (f) any Claim brought against Us by a third party for breach of their Intellectual Property Rights when such breach arose due to reliance on Your Idea and reliance on the warranty provided by you in clause 7.2 of these Terms and Conditions.

9.2 Release

You hereby irrevocably:

- (a) release Us; and
- (b) waive all Claims which You may have in the future against Us,

in respect of any action Claim or remedy whatsoever in any way attributable to Your use of the System.

10. Privacy

- (a) Subject to subclauses (c) and (d) below, We will not collect, use or disclose any Personal Information other than in accordance with Our Privacy Policy.
- (b) We will take all reasonable steps to protect Personal Information in Our possession (if any) against misuse or loss.
- (c) You consent to Your Personal Information being stored on servers which are not owned or controlled by Us and understand that such servers may be located outside of Australia. Whilst We will only engage with third party providers who We reasonably believe will store and use the Personal Information in a manner that accords with Our Privacy Policy, to the extent permitted by law, You hereby release Us from all liability in relation to the misuse or use of Your Personal Information by such third party, including but not limited to any unlawful accessing and copying of Personal Information (including hacking) by third parties from those servers.
- (d) We may sell Our business, or transfer control of Our business to a third party (the Purchaser), who will gain access to the Personal Information collected by Us. You consent to Us disclosing Your Personal Information to a Purchaser, their employees, representatives, lawyers and professional advisers, as part of such a sale.
- (e) Our Privacy Policy can be viewed at www.yodal.com.au.

11. Confidentiality

11.1 Definition

Confidential Information means all technical and other information and know-how, including all information and know-how in an eye or machine readable form or other format, disclosed or given to a party from any source in respect of or incidental to:

- (a) the Intellectual Property Rights; and
- (b) any other information disclosed or given to a party which is declared by the disclosing party to be Confidential Information,

other than:

- (a) information that is already in the public domain at the time of disclosure or becomes available to the public through no breach of these Terms of Use by the receiving party;



- (b) was lawfully in the receiving party's possession before receipt from the disclosing party, without obligation of confidentiality;
- (c) is received free from obligation of confidentiality from a third party lawfully permitted to disclose such information to the receiving party; or
- (d) is independently developed by the receiving party, as evidenced by its business records.

11.2 Non-Disclosure

Each party acknowledges and agrees that in providing and using the System, the parties may not disclose certain Confidential Information. Each party agrees that it will not, without the express prior written consent of the other party, disclose any Confidential Information or any part thereof to any third party. At the termination of this Agreement, each party will return all Confidential Information to the other party.

12. Force Majeure

- (a) Neither party shall be liable for any delay or failure to perform its obligations pursuant to these Terms of Use if such delay is due to Force Majeure.
- (b) If a delay or failures of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended.
- (c) If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 60 days, either party may immediately terminate this Agreement on providing notice in writing to the other party.

13. Miscellaneous

13.1 Waiver

Failure by either party to enforce any clause of these terms of use will not be deemed a waiver of future enforcement of that or any other clause.

13.2 Intellectual Property Rights

We retain all Right, title and interest in the System including all Intellectual Property Rights embodied within the System and in the Template Documents created.

13.3 Survival of Terms of Use

- (a) Subject to any provision to the contrary, these Terms of Use shall enure to the benefit of and be binding on the Parties and their successors, trustees, permitted assigns or receivers but shall not enure to the benefit of any other persons.
- (b) The covenants, conditions, Rights and obligations of this Agreement which are capable of having effect after the expiration of this Agreement shall remain in full force and effect following the expiration of this Agreement.

13.4 Severability

Should any part of these Terms of Use be or become invalid, that part shall be severed, such invalidity will not affect the validity of the remaining provisions of these Terms of Use.

13.5 Entire Agreement

These Terms of Use supersede all prior agreements, arrangements and undertakings between the parties and constitutes the entire Agreement between the parties in relation to those acts, matters or things that are contained in these Terms of Use. No addition to or modification of any provision of these Terms of Use shall be binding upon the parties unless made by written instrument signed by a duly authorised representative of the party.



13.6 *Modification of Agreement*

We reserve the right to modify or terminate these Terms of Use at Our sole discretion. We will notify You in writing if these Terms of Use are modified or terminated.

13.7 *Governing Law*

Our Agreement shall be governed by and construed in accordance with the laws from time to time in force in the state of Queensland, and the parties submit to the exclusive jurisdiction of the Courts of the state of Queensland.

14. *Acceptance*

The System will evolve over time and because of this, these Terms of Use are not intended to be exhaustive. We reserve the right to change these Terms of Use at any time. The change becomes effective at the time that We post the modified terms on Our website. We will attempt to communicate the changes to these terms to You.

You will be required to accept the modified Terms of Use. It is Your obligation to ensure that You have read, understood and agree to the Terms of Use before accepting.

Acceptance by an individual on behalf of an entity will bind the entity to this Agreement.

