

Diversity Council Australia Inclusive Employer Index 2024 - 2025

Terms and Conditions

Please review these terms and conditions carefully. These terms and conditions are binding on you and govern the relationship between you, DCA and DA in relation to your access to and use of the Inclusive Employer Index. These terms and conditions should be read together with [DCA's Privacy Policy](#) and the Diversity Atlas [Privacy Policy](#) and [Code of Conduct](#).

PART A: PRELIMINARY MATTERS

1 Parties

These terms and conditions (referred to within this document as "**Terms**") apply to Diversity Council Australia Limited (ABN 64 421 748 342) (referred to in these Terms as "**DCA**"), Diversity Atlas Australia Pty Ltd (ABN 81 669 259 492) (referred to in these Terms as "**DA**") and the organisation participating in the DCA Member Index (referred to in these Terms as "**Participant**", "**you**" or "**your**"). If the context requires DCA, DA and the Participant may each be referred to as a "**party**" or referred to together as the "**parties**" and DCA and DA may together be referred to as "**we**" or "**our**".

2 Definitions

In these Terms:

Administration Period means a three-week period between 1 July 2024 and 30 September 2024 notified to us in accordance with clause 4.1(a).

Administrator means the Participant's Personnel nominated as 'administrator' during the Participant registration for participation in the Inclusive Employer Index.

Confidential Information means (whether or not in material form and whether or not disclosed before or after the Commencement Date) any information of whatever kind disclosed or revealed by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**") under or in relation to these Terms that:

- (a) is by its nature confidential;
- (b) is designated by the Disclosing Party as confidential, including the content of the Survey; or
- (c) the Receiving Party knows or reasonably ought to know is confidential,

but does not include information that:

- (d) is published or has otherwise entered the public domain without a breach of these Terms;
- (e) is obtained from a third party who has no obligation of confidentiality to the Disclosing Party; or
- (f) is independently developed or obtained without breach of these Terms.

Dashboard means the interface on the Website available to the Participant to access its results of the Survey and related features.

DCA Member means the members of DCA included on its member register, as updated from time to time.

Inclusive Employer Index means the annual survey conducted by DCA to map and track the state of inclusion in participating DCA Members, including the Survey and the Dashboard.

DCA Member Index Benchmark means a benchmark of total aggregate results for all Participant organisations.

Fee means the fee payable by you for participation in the DCA Member Index, as notified by us.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Inclusive Employer means a organisation who has administered the Inclusive Employer Index survey between 1 July 2024 and 30 September 2024, invited at least 65% of their workforce to participate, received a response rate of 20% from the 65% invited, and achieved results that exceeded the National Benchmark Index on at least five of the following measures:

- (a) awareness;
- (b) engagement;
- (c) inclusive organisational climate;
- (d) inclusive leadership;
- (e) inclusive team; and

(f) exclusion.

Inclusive Employer Logo means the logo provided to you by DCA in accordance with clause 7(b)(iii).

Licensed Intellectual Property means the Inclusive Employer Logo and the Participant Survey Results.

National Benchmark Index means a benchmark of total results from the National Index.

National Index means the biennial national survey conducted by DCA to map and track the state of inclusion in the Australian workforce.

Participant Survey Results means the results of your Survey and the related information and materials made available to you via the Dashboard and the Report but, for the avoidance of doubt, does not include the questions comprising the Survey.

Permitted Use means:

- (a) in relation to the Inclusive Employer Logo, the display of the Inclusive Employer Logo, including on the Participant's website and marketing collateral in relation to the DCA Member Index; and
- (b) in relation to the Participant Survey results, for the Participant's internal purposes and otherwise in accordance with clause 5(d)(ii).

Personnel means officers, employees, agents, volunteers and contractors of a party.

Privacy Laws means the *Privacy Act 1988* (Cth), the *Spam Act 2003* (Cth), the *Telecommunications Act 1997* (Cth), the *Do Not Call Register Act 2006* (Cth) and any other applicable legislation, principles, industry codes and policies relating to the handling of personal information.

Report means a report detailing the high-level results of the Participant's Survey, in a form to be determined by DCA.

Survey means the national survey administered by DA on behalf of DCA measuring, among other things:

- (a) the Participant's Personnel's experiences of diversity and inclusion at their workplace; and
- (b) key impact indicators of inclusion and exclusion amongst Personnel of the Participant.

Website means DA's Diversity Atlas website: <https://www.diversityatlas.com.au/> (including all of its pages).

PART B: INCLUSIVE EMPLOYER INDEX USE AND PARTICIPANT OBLIGATIONS

3 Eligibility requirements

To be eligible to participate in the Inclusive Employer Index you must:

- (a) pay the Fee in the amount and in the manner prescribed by us; and
- (b) complete and lodge the registration form in such manner as we determine from time to time which, for the avoidance of doubt, may include registering using the Internet.

4 Survey

4.1 Survey access

- (a) Following payment of the Fee and confirmation of your registration, we will ask you to advise your desired Administration Period during which the Survey will be conducted.
- (b) Within a reasonable time prior to the commencement of the Administration Period, DA will grant the Participant access to the Survey via a dedicated page (or suite of pages) on the Website.
- (c) DA will provide the Survey to gather information to measure, among other things:
 - (i) the Participant's Personnel's experiences of diversity and inclusion at their workplace; and
 - (ii) key impact indicators of inclusion and exclusion amongst Personnel of the Participant.
- (d) The Administrator will be granted the appropriate permissions by DA to generate links for Participant Personnel granting access to the Survey during the Administration Period.
- (e) You acknowledge the maximum number of links able to be issued by you is determined based on your chosen pricing structure and associated Fee, which will be advised to you by us.

4.2 Survey content and use

- (a) You acknowledge and agree:
 - (i) DCA will be solely responsible and has full discretion over the questions and other materials comprising the Survey;
 - (ii) all right title and interest in the Participant Survey Results, including any intellectual

property rights, will upon creation be owned by DCA.

- (b) The Participant agrees to ensure that all communications with its Personnel regarding the Survey:
 - (i) make it clear that participation in the Survey is voluntary and not mandatory;
 - (ii) inform Personnel of the confidential nature of the Survey and how their Personal Information may be used; and
 - (iii) are otherwise in compliance with these Terms, including in relation to the permitted use and disclosure of the Survey, Report and Dashboard.
- (c) The Survey is only open to Australian-based Personnel and the Participant confirms it will not invite any of its Personnel to participate if they do not ordinarily reside in Australia.

5 Dashboard and Report

- (a) Throughout the Administration Period and following completion of the Survey and until 31 December 2024, the Administrator will have access to the results through a Dashboard on the Website.
- (b) The Participant will receive the Report within three months of the end of the Administration Period, in .pdf format (or such other format as we determine).
- (c) The Participant agrees to be bound by the Diversity Atlas [Code of Conduct](#).
- (d) The Participant acknowledges and agrees:
 - (i) Survey results provided, both in the Report and through the Dashboard will be aggregated and de-identified so that no Personal Information of any Personnel of the Participant is revealed;
 - (ii) it may not disclose the content of its Survey results, the content of the Report or the Dashboard to any third party without the prior written consent of DCA, but for the avoidance of doubt is permitted to make disclosures pursuant to clause 7.

6 DCA Member Index Benchmark

- (a) You agree to:
 - (i) the results of your Survey being utilised by DCA to prepare and publish the DCA Member Index Benchmark;

(ii) DCA utilising your name in connection with the Inclusive Employer Index.

- (b) The DCA Member Index Benchmark will:
 - (i) not contain identifiable Personal Information of any Participant Personnel; and
 - (ii) show only total aggregate results for all participating DCA Members and not individual DCA Member results.

7 Inclusive Employer

- (a) Based on the responses of your Personnel to the Survey administered during the period 1 July 2024 and 30 September 2024, you will be assessed by DCA against the National Index Benchmark as to whether you are an Inclusive Employer.
- (b) If you are determined by DCA to be an Inclusive Employer, you:
 - (i) will be notified that you are an Inclusive Employer;
 - (ii) will be granted a licence to use the Inclusive Employer Logo pursuant to clause 11;
 - (iii) will be provided with a copy of the Inclusive Employer Logo for use in accordance with these Terms; and
 - (iv) agree to DCA's publication of your name on its website and associated marketing materials in relation to the Inclusive Employer Index.
- (c) If you are not determined by DCA to be an Inclusive Employer, you will:
 - (i) be notified by DCA that you are not an Inclusive Employer; and
 - (ii) will not be permitted to use the Inclusive Employer Logo or otherwise describe yourself as an Inclusive Employer in association with DCA.
- (d) You acknowledge and agree DCA's decision in relation to the whether or not you are an Inclusive Employer is final.

8 Participant further acknowledgements

- (a) Your participation in the Survey and your assessment as an Inclusive Employer (if applicable) does not constitute DCA's endorsement, recommendation or support of you or your products or services and you must not represent (either directly or indirectly) or in

any way imply that your participation in the Survey and your assessment as an Inclusive Employer is an endorsement, recommendation or support from DCA.

- (b) We may group, categorise, order and otherwise display the content of the Survey, Dashboard and Report in such manner as we determine in our sole discretion.
- (c) We may change the format, look and feel of the Survey, Dashboard and Report at our sole discretion and from time to time without notice.

9 DCA Member Index use and obligations

- (a) You remain responsible for all of your activity on or in connection with the Inclusive Employer Index.
- (b) You must ensure your engagement with and use of the Inclusive Employer Index, including by your Personnel, does not include any content that:
 - (i) is (or would reasonably be regarded as being) in any way harassing, defamatory, threatening, obscene, abusive, racist, sexist, offensive or otherwise inappropriate or unlawful, including material that racially or religiously vilifies, incites violence or hatred, or is likely to insult or humiliate others based on race, religion, ethnicity, gender, age, sexual orientation or any physical or mental disability;
 - (ii) would harm, abuse, stalk or threaten any person;
 - (iii) is inaccurate, misleading or deceptive;
 - (iv) infringes the intellectual property or other rights of another person;
 - (v) creates a privacy or security risk to any person;
 - (vi) would reflect negatively on us, including our goodwill, name and reputation;
 - (vii) would otherwise result in civil or criminal liability for you, us or any third party.
- (c) You will not, and will ensure your Personnel do not, engage in any conduct that will or is likely to harm the business or reputation of DCA or DA, or otherwise bring DCA or DA into disrepute, scandal or ridicule.
- (d) You must not use the Inclusive Employer Index for any purpose other than as specified in these Terms.
- (e) Any commercial use, provision to consultants for the provision of diversity and inclusion

advice, use in violation of these Terms, or use for data mining or other unauthorised purposes in relation to the Inclusive Employer Index, is expressly prohibited.

- (f) You must only use the Inclusive Employer Index for lawful purposes, in compliance with all applicable laws and regulations and in a responsible manner.
- (g) You must ensure your Personnel comply with these Terms and all related obligations arising under them and you agree you will be liable for the acts and omissions of each of your Personnel in connection with these Terms, as fully as if they were your own.

10 DCA Member Index availability and reliability

- (a) Whilst we will take steps to facilitate the availability of the Survey and Dashboard, we do not guarantee or warrant that you will have continuous access to the Survey or Dashboard or that your use of the Survey or Dashboard will be uninterrupted or error free, that the Website, Survey or Dashboard is accurate, complete or free of viruses or other harmful components, or that any defects in the Survey or Dashboard will be corrected promptly or at all.
- (b) You agree that use of the Survey and Dashboard is provided on an 'as is' and 'as available' basis. You also agree that neither DCA nor DA are responsible for any loss, corruption or interception of data sent to or from the Website which occurs outside of our computer systems (such as those which occur while being sent over the internet).

PART C: INTELLECTUAL PROPERTY, CONFIDENTIALITY AND PRIVACY

11 Intellectual property

11.1 Ownership of intellectual property

You acknowledge and agree:

- (a) DCA retains ownership over its pre-existing intellectual property used in connection with the Inclusive Employer Index; and
- (b) any intellectual property resulting from the Inclusive Employer Index (including the results of the Survey) will be owned by DCA.

11.2 Use of intellectual property

- (a) Subject to clause 7, DCA grants to the Participant a non-exclusive, royalty free, non-sublicensable licence to use the Licensed

Intellectual Property in Australia but only in accordance with:

- (i) this clause 11; and
 - (ii) the Permitted Use, or as DCA otherwise permits in writing.
- (b) The Participant must ensure that all materials on which it uses the Licensed Intellectual Property:
- (i) complies with DCA's reasonable directions and guidelines, including the 'Use of Inclusive Employer 2024-2025 Logo' Guidelines as may be provided to you by DCA;
 - (ii) are of a high standard;
 - (iii) comply with all applicable laws; and
 - (iv) are consistent with the reputation and goodwill of the Licensed Intellectual Property and DCA.

11.3 Acknowledgments and warranties

- (a) The Participant acknowledges that:
- (i) it is not permitted to and must not sublicense or assign the licence granted to it under clause 11.2(a);
 - (ii) nothing in these Terms gives the Participant any rights or interests in the Licensed Intellectual Property, other than as a licensee under these Terms;
 - (iii) the Licensed Intellectual Property is significant to the goodwill and reputation of DCA; and
 - (iv) all use of the Licensed Intellectual Property (including any goodwill from that use) inures to the benefit of DCA.
- (b) DCA warrants it has the right to permit the Participant to use the Licensed Intellectual Property in the way contemplated by these Terms and the Licensed Intellectual Property licensed to the Participant under these Terms will not, to the best of its knowledge, infringe any third party's rights.

11.4 Sub-licensing and assignment

The Participant is not permitted to and must not sublicense or assign the licence granted to it under clause 11.2(a) without the prior written consent of DCA.

11.5 Termination of licence

Without limiting a party's right to terminate these Terms under clause 13, DCA may terminate the licence granted under 11.2(a) immediately if:

- (a) the Participant uses or authorises the use of the Licensed Intellectual Property in a manner which breaches this clause 11;
- (b) the Participant breaches these terms; or
- (c) DCA's right to the Licensed Intellectual Property is terminated by a third party.

12 Confidentiality and privacy

- (a) The Receiving Party must keep the Confidential Information of the Disclosing Party secret and confidential, and must not use or disclose such Confidential Information without the prior consent of the Disclosing Party except disclosure:
- (i) to the Receiving Party's directors, officers, employees, contractors and professional advisers, but only to the extent they need to know such Confidential Information for the purposes of performing its obligations, or exercising its rights, under these Terms;
 - (ii) that is reasonably necessary for the purposes of any legal or arbitral proceedings involving it or any of its Related Bodies Corporate; or
 - (iii) to the extent required by law (or by any registered stock exchange) after reasonable notice of intent to disclose has been given to the Disclosing Party.
- (b) The Receiving Party must take all reasonable steps to:
- (i) ensure no Confidential Information of the Disclosing Party is used, directly or indirectly, in any way that is detrimental or adverse to the Disclosing Party and each person to whom any Confidential Information of the Disclosing Party must be or has been disclosed does not use or disclose such Confidential Information except as is consistent with these confidentiality commitments; and
 - (ii) protect the Disclosing Party's Confidential Information from misuse and loss and from unauthorised access, modification and disclosure.
- (c) Each party must comply with all Privacy Laws in relation to personal information it handles under or in relation to these Terms and must take all reasonable steps to ensure its Personnel comply with Privacy Laws.
- (d) DCA and DA take reasonable steps to protect the privacy and security of your information. Please refer to [DCA's Privacy Policy](#) and the

Diversity Atlas [Privacy Policy](#) for further information about how your personal information is handled by each of DCA and DA. Your use of the DCA Member Index is subject to, and you warrant that you have read and agree with, each of these Privacy Policies.

DA may, at its

discretion, grant further access to the Dashboard and results of the Survey subject to the payment of an additional fee.

PART D: GENERAL

13 Term, termination and suspension

- (a) These Terms commence on the date you are accepted to participate in the Inclusive Employer Index (**Commencement Date**) and will expire on the earlier of the date:
- (i) you withdraw from the Inclusive Employer Index registration process by notifying us in writing;
 - (ii) we decline your Inclusive Employer Index registration;
 - (iii) you notify us in writing of your desire to cease participation in the Inclusive Employer Index;
 - (iv) you cease to be a DCA Member, provided the Administration Period has concluded or otherwise on the date you receive your Report (following the cessation of your membership);
 - (v) 30 June 2024; or
 - (vi) as otherwise permitted under these Terms, including in accordance with clause 13(b)(ii),

(End Date).

- (b) We may by notice to you, at our sole discretion, immediately:
- (i) disable, block or suspend your right to access and use the Inclusive Employer Index and the Licenced Intellectual Property; and
 - (ii) terminate these Terms,
- if you breach these Terms or we deem it necessary to protect the security and integrity of the Inclusive Employer Index or any data or information on it.
- (c) Following the End Date:
- (i) your access to the Inclusive Employer Index will cease immediately and you will cease to have access to the Survey and Dashboard; and
 - (ii) if you wish to access your Dashboard and results of the Survey you will be required to submit a request to DA in writing and

14 Fee

- (a) The Fee is payable at the time of registering to participate in the Inclusive Employer Index.
- (b) We will provide you with an invoice in relation to the Fee, which will include the terms and method of payment.

15 GST

- (a) Any consideration or amount payable under or in connection with these Terms, including any non-monetary consideration (**Consideration**), is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with these Terms, an additional amount is payable by the party providing the Consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) Any capitalised term used in this clause 15 which is defined in the GST Law, but is not defined in clause 2, has the meaning given to it in the GST Law.

16 Warranties

You warrant:

- (a) you have full legal capacity and power to enter into and perform your obligations under these Terms;
- (b) your acceptance of and performance of your obligations under these Terms will not amount to a breach of any other agreement, arrangement or understanding to which you are a party or infringe the rights, including intellectual property rights, of any third party; and
- (c) you have not had any insolvency event occur which is still in existence and no circumstances exist that may give rise to an insolvency event.

17 Liability and indemnity

- (a) To the maximum extent permitted by law, the maximum aggregate liability of each of DCA and DA for all claims under or relating to these Terms or the Inclusive Employer Index whether in contract, tort (including negligence), in

equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, is limited to an amount equivalent to the Fee you have paid to DA (if any).

- (b) Subject to clause 17(c), all express or implied guarantees, warranties, representations, statements, terms and conditions relating to these Terms and the Inclusive Employer Index that are not contained in these Terms are excluded to the maximum extent permitted by law.
- (c) Nothing in these terms and conditions is intended to limit, restrict, modify or exclude rights which you may have under any law (including the Australian Consumer Law) which may not be lawfully limited, restricted, modified or excluded by agreement (**Your Consumer Rights**). Your Consumer Rights include the right for services to be fit for their specified purpose and to be provided with due care and skill. You can find out more about Your Consumer Rights from consumer organisations and bodies such as the Australian Competition and Consumer Commission and State/Territory fair trading authorities.
- (d) If DCA or DA is able to limit your remedy for a breach of Your Consumer Rights, then their liability for breach of Your Consumer Rights is limited to one or more of the following at our option:
 - (i) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or
 - (ii) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- (e) Subject to DCA and DA's obligations under Your Consumer Rights, and to the maximum extent permitted by law, DCA and DA are not liable for, and no measure of damages will, under any circumstances, include:
 - (i) special, indirect, consequential, incidental or punitive damages; or
 - (ii) damages for loss of profits, revenue, goodwill, anticipated savings or loss or corruption of data,

whether in contract, tort (including negligence), in equity, under statute or on any other basis, whether or not such loss or damage was

foreseeable and even if advised of the possibility of the loss or damage.

- (f) You indemnify and hold each of DCA, DA and their Personnel harmless against any losses, costs, claims, damages, expenses, liabilities, proceedings or demands (including third party claims) that it and its Personnel may directly or indirectly incur or suffer as a result of or in connection with:
 - (i) any breach of these Terms or any law, including the Australian Consumer Law, by you or any of your Personnel;
 - (ii) any fraud, dishonesty or wilful misconduct of you or your Personnel;
 - (iii) any defect in any product or service provided by you in relation to the Inclusive Employer Index (including any failure of a product or service to comply with all applicable laws and safety standards);
 - (iv) any claim by a third party against either one or both of us arising out of the Participant Content or the products or services provided by you, including any claim that they infringe the intellectual property rights of any third party.

18 General

- (a) These Terms represent the entire agreement between the parties in respect of your use of the Inclusive Employer Index.
- (b) If any part of these Terms is held to be unenforceable or invalid, that part will be severed and the remaining terms and conditions will continue to apply.
- (c) These Terms are governed by the laws of New South Wales, Australia, and you agree that the courts of New South Wales (and the appeal courts from them) have exclusive jurisdiction to resolve any disputes arising under or in connection with these terms and conditions
- (d) The word "including" when used in these Terms of use is not a term of limitation.
- (e) You may not assign, sublicense or transfer, or purport to assign, sublicense or transfer your rights or obligations under these Terms.
- (f) Except as expressly provided in these Terms, you must, at your own expense, do all things reasonably necessary to give full effect to these Terms and the matters contemplated by them.
- (g) Clauses 11, 11.3, 13, 17 and this clause 18(g) survive termination or expiry of these Terms

together with any other term which by its nature is intended to do so

- (h) Failure by DCA or DA to enforce a right under these Terms does not constitute a waiver of that right.