

TERMS OF USE

1. DEFINITIONS

Agreement means these Terms of Use and any document or terms incorporated herein by reference.

Business means the company, partnership, body corporate, trust, joint venture or other form of business that the User trades under, is an officer of, is an employee of, is a member of and/or has registered the use of the Services on behalf of.

ProjectPAY means PROJECTPAY PTY LTD (ACN 619 371 381) and its permitted assigns (which may also be referred to within this Agreement as 'we', 'us' and 'our').

Fee means the annual fee for the use of the Services, which is to be paid by the User to ProjectPAY in accordance with this Agreement.

User (also referred to within this Agreement as 'you and 'your') means the named individual user that has registered an account with ProjectPAY to use the Services (for its own benefit or on behalf of the Business).

'party' or 'parties' means respectively a party and the parties to this Agreement and includes the party's or parties' administrators, successors and permitted assigns.

Privacy Policy means ProjectPAY's privacy policy published on the Website (as amended from time-to-time).

Trial Period means the period of 1 March 2018 to 30 June 2018 (inclusive).

Services means all software, electronic applications, documentation, the Website and other products and services provided by ProjectPAY.

Website means ProjectPAY's website with the URL www.projectpay.com.au.

2. THIS AGREEMENT

- 2.1. This Agreement is a legally binding contract between you, the Business and ProjectPAY with respect to the Services.
- 2.2. Your use, access or downloading of the Services, including registration of an account via the Website, constitutes the Business' and your acceptance of this Agreement.
- 2.3. The Business shall be jointly and severally liable for all obligations, risks and liabilities of the User under or in connection with this Agreement. The Business shall be jointly and severally liable for all and any acts or omissions of the User in connection with this Agreement.
- 2.4. All rights and powers of ProjectPAY that are enforceable against the User shall be jointly and severally enforceable against the Business.

- 2.5. Your registration as a User and this Agreement will continue indefinitely until terminated in accordance with this Agreement.
- 2.6. This Agreement does not create any partnership, joint venture, agency or employment relationship between you and ProjectPAY or the Business and ProjectPAY.
- 2.7. The Agreement is the entire agreement and understanding between ProjectPAY, the Business and the User on everything connected with the subject matter of this Agreement.
- 2.8. No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.
- 2.9. The parties acknowledge and warrant that they consider the terms of the Agreement to be reasonable to legitimately protect the interests of the parties.

3. TRIAL PERIOD

- 3.1. The Services are still in development and your access to them during the Trial Period is the subject of a 'beta testing' process.
- 3.2. You acknowledge and accept that during the Trial Period, the Services are in a state of pre-release and are being tested and trialed for further development and final release.
- 3.3. ProjectPAY makes no warranty as to, and accepts no liability for, the fitness, quality or suitability of the Services during the Trial Period.
- 3.4. ProjectPAY makes no warranty as to, and accepts no liability for, any support services for the Services during the Trial Period.
- 3.5. ProjectPAY will monitor your use of the Services at all times for the purposes of improving, upgrading and developing the Services.
- 3.6. During the Trial Period, ProjectPAY may reject your registration and/or terminate this Agreement in its absolute discretion and without providing reasons.
- 3.7. You agree to provide to ProjectPAY any reasonably requested information by ProjectPAY or its agents, regarding your experience in using the Services. This may include but will not be limited to the completion of a survey during or at the end of the Trial Period.

4. PAYMENT OF FEE

- 4.1. No Fee will be payable for your use of the Services during the Trial Period.
- 4.2. A Fee will be a debt due and payable by you to ProjectPAY (without setoff) immediately:
 - 4.2.1. upon the expiration of the Trial Period, unless you have deregistered your use of the Services; or
 - 4.2.2. upon registration after the expiration of the Trial Period; and
 - 4.2.3. every 12 months thereafter unless you have previously deregistered your use of the Services; and
 - 4.2.4. upon any re-registration of your use of the Services.

- 4.3. To the full extent permitted by law, all Fees are non-refundable once paid, regardless of whether, or when, the Agreement is terminated thereafter (by whatever means).
- 4.4. The initial Fee will be notified to you in writing by ProjectPAY by electronic means at least 21 days before the expiration of the Trial Period.
- 4.5. Unless expressed otherwise, the Fee is exclusive of GST.
- 4.6. ProjectPAY may increase the Fee annually by no more than 15% upon 14 days' written notice being given to the User.
- 4.7. You consent to ProjectPAY collecting and safely maintaining your credit or debit card details and directly debiting your credit or debit card for the payment of any Fee.

5. USER WARRANTIES

- 5.1. You warrant and represent that:
 - 5.1.1. you have the authority to enter into this Agreement on behalf of the Business;
 - 5.1.2. any information provided by you to ProjectPAY is accurate and up-to-date;
 - 5.1.3. you have had a reasonable opportunity to read, negotiate and seek independent advice as to this Agreement;
 - 5.1.4. you are legally capable to enter into this Agreement and use the Services;
 - 5.1.5. you are solely responsible for ensuring the fitness and suitability of the Services for the Business' or your purposes of use;
 - 5.1.6. you or the Business will not use the Services for personal, domestic or household purposes; and
 - 5.1.7. you will ensure all of your passwords and usernames associated with the Services are kept secure and confidential.

6. CODE OF CONDUCT

- 6.1. You must not use the Services to engage in any conduct that is unlawful, fraudulent, improper, offensive, misleading or likely to mislead, defamatory, vilifying, racist, harassing, threatening, abusive, discriminatory, inappropriate, or that might cause harm of any kind to any person or to property or which might encourage illegal activities.
- 6.2. You must not in connection with the Services, act in a manner that is detrimental to the interests of ProjectPAY or that brings the reputation of ProjectPAY into disrepute.
- 6.3. You must comply with any codes or policies released by ProjectPAY from time-to-time regarding the use of the Services or standards of conduct to be adhered to in using the Services.
- 6.4. ProjectPAY may in its absolute discretion, amend or delete any information you provide in the use and access of the Services if that information is incorrect, misleading, fraudulent, negligent or in breach of this Agreement. ProjectPAY will not be liable for any third party's, the Business' or your use or reliance upon any such amended or deleted information.

7. TITLE & COPYRIGHT

- 7.1. ProjectPAY has and will maintain at all times, title in the Services and the intellectual property rights associated with them.
- 7.2. All and any intellectual property rights that are created under or in connection with the Agreement will vest in ProjectPAY.
- 7.3. The User must ensure that it and its employees, contractors, officers, agents or other representatives do not infringe on any intellectual property rights or moral rights of ProjectPAY or third parties in connection with this Agreement or the Services.
- 7.4. The User grants ProjectPAY an irrevocable licence to use, display, copy, reproduce, modify, publish, distribute or adapt any intellectual property they provide to ProjectPAY or upload onto the Website.

8. RISKS OF ELECTRONIC COMMUNICATIONS

- 8.1. You acknowledge that the use of electronic software, communications and transactions carries a security risk and you accept all and any such risks by accessing, downloading or using the Services.
- 8.2. ProjectPAY does not make any warranty concerning the security, reliability, completeness or confidentiality of any information transmitted via the Services and it disclaims liability for the same.
- 8.3. ProjectPAY will not be liable for any unauthorised, mistaken or incorrect transactions directly or indirectly connected with or arising from the Services.
- 8.4. ProjectPAY may need to temporarily suspend, limit or interrupt access to the Services from time-to-time for the repair, maintenance, amending or upgrading of the Services or for any other purpose implied by this Agreement.
- 8.5. ProjectPAY does not make any warranty as to the backup and recovery of any information or data provided by you in connection with your use of the Services. You warrant and accept that it is the User's sole responsibility to ensure all information or data provided by you in connection with your use of the Services, is safely copied and stored.

9. LIMITS ON LIABILITY

- 9.1. To the full extent permitted by law, ProjectPAY will not be liable to the User on any basis (including negligence, tort, contract, statute or otherwise), for any loss of profits, loss of business, loss of revenue, loss of goodwill, cost of capital, loss of use of property, increase in capital costs, increase in operating costs or any other financial or economic loss or indirect, special, incidental, or consequential loss or consequential damage arising under or in connection with this Agreement.
- 9.2. To the full extent permitted by law, ProjectPAY's total aggregate liability for any costs, losses, damages, fees, claims, actions or other form of liability, whether under or in connection with the Agreement, statute, in tort, equity, restitution or otherwise, is limited to the amount of any Fees paid by the User.
- 9.3. To the full extent permitted by law, you shall indemnify and hold harmless ProjectPAY from any costs, losses, damages, fees, liabilities, causes of

action, suits or claims arising directly or indirectly out of:

- 9.3.1. any inaccurate, out-of-date, false or misleading information you provide to ProjectPAY or its partners and/or affiliates;
- 9.3.2. any breach of copyright caused or contributed to by you;
- 9.3.3. your use or misuse of the Services;
- 9.3.4. the risks identified in Clause 8 of this Agreement;
- 9.3.5. events beyond ProjectPAY's reasonable control, including but not limited to the acts or omissions of any financial institutions in connection with your use of the Services;
- 9.3.6. any breach, default, administration, performance or non-performance under or in connection with any contract that you register, add, administer or reference in your use of the Services (whether that breach, default, administration, performance or non-performance be by you or any other party to such contract(s)); and
- 9.3.7. any act, omission or breach of this Agreement by you.

10. CONFIDENTIALITY

- 10.1. Except as required at law or with the written consent of ProjectPAY, you must not disclose information regarding the nature of or your use of the Services during the Trial Period.
- 10.2. You authorise ProjectPAY to make, directly or through third parties, any enquiries ProjectPAY considers necessary to confirm your identity. This may include ordering a credit report, performing other credit checks and verifying information you provide against third party databases.
- 10.3. You acknowledge and accept that information provided by you in connection with the Services may be accessible or disclosed to third parties with an interest (of any nature) in the Services or in any project or contract that is registered or added to your account with ProjectPAY. This may include government bodies, business partners of affiliates of ProjectPAY and project-related builders, developers or contractors (and their controllers)

11. TERMINATION

- 11.1. During the Trial Period, ProjectPAY may in its absolute discretion and for any reason, suspend or terminate this Agreement or the Services.
- 11.2. ProjectPAY may terminate this Agreement and your access to the Services if it determines in its absolute discretion that you have breached any term of this Agreement.
- 11.3. The User may at any time end its registration as a User and terminate this Agreement by deregistering its account with ProjectPAY.
- 11.4. Clauses 1, 2, 4, 5, 6, 7, 8, 9, 10, 12, 13 will survive the termination of this Agreement.

12. DISPUTES

- 12.1. If a dispute or difference arises out of or in connection with the Agreement, a director or

senior manager from the User and ProjectPAY (with the requisite authority to effect resolution of the dispute/difference) must, within 20 business days of a written notice detailing the dispute being issued by either party, meet in person in Perth WA in an attempt to negotiate in good faith to resolve the dispute.

- 12.2. Should the parties be unable to resolve the dispute/difference within 40 business days of the written notice under Clause 12.1 being issued, either party may then refer the dispute to arbitration.
- 12.3. The Chair, president or their delegate of the Resolution Institute of Australia (WA Chapter) shall appoint a suitably qualified arbitrator, should a dispute be referred to arbitration.

13. GOVERNING LAW

- 13.1. The laws of Western Australia govern this Agreement. ProjectPAY and the User agree to submit to the jurisdiction of the courts in Western Australia.

14. ASSIGNMENT

- 14.1. The User cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the written consent of ProjectPAY (which may be withheld in the ProjectPAY's absolute discretion).
- 14.2. ProjectPAY may transfer or assign this Agreement, and any right or obligation under this Agreement to a third party without your consent. ProjectPAY will notify you in advance of such a transfer or assignment.

15. SEVERABILITY

- 15.1. If any clause in this Agreement is unenforceable, illegal or void, or makes this Agreement or any part of it unenforceable, illegal or void, then that clause or subclause is severed and the rest of this Agreement remains in force.

16. VARIATION

- 16.1. ProjectPAY may reasonably vary the terms of the Agreement from time-to-time due to changes in the Services of any nature or as required by law.
- 16.2. ProjectPAY will provide the User with 14 days' written notice of any variations to the terms of this Agreement, with the amended Agreement then being uploaded to the Website and taking effect at that time.

17. WAIVER

- 17.1. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 17.2. A waiver is not effective unless it is in writing.
- 17.3. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

18. PRIVACY POLICY

- 18.1. By registering an account with ProjectPAY or otherwise using the Services, you acknowledge and accept the terms of our Privacy Policy.