



# Terms Of Service

Updated December 10, 2018

**Guardhouse**

**User Agreement**

This User Agreement (**Agreement**) is a legally binding agreement and governs the licensing and use of the Guardhouse software from Guardhouse Pty Limited ACN 629 088 795 (**We, Us** or **Our**). By clicking "**I agree**" or by using or installing the **Software, You (You or Your)** acknowledge and agree that **You** have read and understood the **Agreement** and agree to be bound by its terms and that if **You** are using the **Software** on behalf of an entity other than **Yourself, You** have the power and authority to bind that entity and consent to this **Agreement**.

1. **DEFINITIONS.** The following terms apply to this **Agreement**:

**Confidential Information** means all trade secrets, ideas, know how, concepts and information whether in writing or otherwise relating in any way to **Us** or to **You, Our** sub-licensees, agents and employees, **Your** or **Our** affairs or businesses, sales, marketing or promotional information, this **Agreement** including any such information in **Our** or **Your** power, possession or control concerning or belonging to any third party but does not include information that: (a) is, or becomes part of, the public domain otherwise than by breach of this **Agreement** by **You** or **Us**; (b) is lawfully obtained by either party from another person without any restriction as to use and disclosure; or (c) was in the receiving party's possession prior to disclosure to it by **You** or **Us**.

**Fees** means the **Subscription Fee** and any additional fees that **You** and **Us** agree are payable under this **Agreement**.

**First Term** means the term specified in the **Plan** that **You** and **We** agree for the use of the Software under this Agreement.

**Subscription Fee** means the non-refundable fee owed by **You** under the **Plan** specified in the **Order** for the license to use the **Software**.

**Moral Rights** has the same meaning as the term has in Part IX of the *Copyright Act 1968 (Cth)*.

**Order** means **Your** purchase of the right to use the **Software** during a **Term** based on information you provided in a form of a quote and/or invoice sent to you.

**Our Intellectual Property Rights** means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields under the laws of any jurisdiction throughout the world and includes data and usage statistics that **We** collect from **Users** of the **Software** but excludes **Your Confidential Information**.

**Plan** means the monthly, quarterly or yearly plan that select in your **Order** for the **Software**.

**Renewal Term Subscription Fee** means the fee owed by **You** to **Us** to extend the license and this **Agreement** for the **Renewal Term**.

**Renewal Term** means the period that starts at the end of the **First Term** and is usually equal in length of the **First Term** unless **You** have changed **Plans** and includes each subsequent **Renewal Term**.

**Software** means the Guardhouse software program and includes any updates, upgrades, modifications and documentation that **We** provide to **You**.

**Term** means the **First Term** and any subsequent **Renewal Term**.

**User** means a single person member of **Your** staff, whether engaged by **You** as an employee or contractor and a User account may not be shared with other people].

**Website** means the Guardhouse website, including its content, or the website of a partner of **Ours** who is authorised to distribute the **Software**.

2. **LICENSE.** We grant **You** a non-exclusive, non-transferable, limited licence to use the **Software** from **Our Website** for the **Term** specified in

the **Order**. **You** may only use the **Software** for the number of **Users** specified in the **Order**. This license does not allow **You** to use the **Software** to operate a service bureau, SaaS, hosting service or other similar service. Neither this **Agreement** nor the **Software** may be sold, leased, assigned, sublicensed or transferred by **You**, in whole or in part.

3. **SCOPE OF USE.** **You** may only use the **Software** for **Your** internal business purposes and **You** may not modify, alter or adapt the **Software** or merge all or part of it with any other **Software** without **Our** prior written consent. **You** may not reverse engineer, reverse compile, decompile the **Software** or create derivative works, reproductions or adaptations of the **Software** or access or discover its source code or any trade secret related to the **Software**. **You** may not remove or obscure any notice relating to **Our Intellectual Property Rights**. **You** may not use the **Software** or the **Website** other than for its intended purpose and **You** must immediately notify us if **You** become aware of any unauthorised use of the **Software**. **You** acknowledge that **We** may incorporate technical features into the **Software** to enforce this **Agreement**.
4. **RECORDS INSPECTION.** **You** acknowledge that we may audit the number of **Users** that **You** have for the **Software**. **You** agree to pay for **Your** excess usage of the **Software**.
5. **PROVISION OF INFORMATION.** **You** must provide **Us** with information and data in order for **Us** to enable **You** to use the **Software**. **You** agree to grant **Us** a non-exclusive, transferable, perpetual, irrevocable, fully paid up license to use this information and data, including generic material included in that information and non-personal data, provided it does not embody **Your Confidential Information**. **Our** use of **Your** information is subject to **Our** privacy policy, which is available from -- <http://www.guardhousehq.com/privacy> (**Privacy Policy**). **You** irrevocably consent to **Us**, **Our** employees, servants, agents, licensee and assigns, doing any acts or making any omissions that constitute a breach of **Your Moral Rights** in any information or data that **You** provide to **Us** or create using the **Software**, including the right to not name **You** as the author and amending any part of the information and **You** agree that **Your** consent is given freely and not under duress of any kind. **You** further agree that **We** may use, adapt, translate, commercialise, exploit (including granting **Our** customers the rights to do the same) and treat the information and data in any way without **You** asserting any of **Your Moral Rights**
6. **FEES.** **You** agree to pay the **First Term Subscription Fee** as specified in the **Order**. **You** must pay a **Renewal Term Subscription Fee** to use the **Software** for a **Renewal Term**. Your average guard number that is agreed on **First Term Subscription** is subject to review and a pro-rata invoice

can be sent at any time. **We** may increase the **Fees** at any time to reflect changes in **Our** standard rates and charges. The **Fees** that you pay to us are exclusive of taxes, levies and duties imposed by taxing authorities and **You** are liable for such taxes, levies and duties including the Australian goods and services tax (**GST**).

7. **CONFIDENTIAL INFORMATION.** **We** and **You** agree not to disclose, duplicate or otherwise reproduce, directly or indirectly, each other's Confidential Information in whole or in part. **We** and **You** further agree to use each other's Confidential Information solely for the purposes of exercising each other's rights stated under this **Agreement** or other rights that are clearly contemplated by this **Agreement**.
8. **WARRANTY DISCLAIMER.** The **Software** and the **Website** are provided "as is" without warranties of any kind, either express or implied. **We** do not warrant that the **Software** or the **Website** will operate uninterrupted or error free or that any materials made available to **You** are accurate, complete, reliable, current or error free. We disclaim all warranties, express, statutory, and implied, including, but not limited to, the implied warranties of accuracy, quiet enjoyment, non-infringement, merchantability and fitness for a particular purpose.
9. **INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY.** **You** agree that **We** own **Our Intellectual Property Rights** in the **Software**, including improvements, modifications or enhancements to the **Software** and that **You** obtain no right or interest in the **Software** or any part of the **Software**. **You** agree that **We** may use **Our Intellectual Property Rights** to further develop, improve and promote the **Software**.

If **We** are held by a court of competent jurisdiction to have infringed a third party's copyright in a country where **You** are authorised to use the **Software**, then we may at **Our** own expense: (a) modify the **Software** so that it becomes non-infringing; (b) obtain for **You** a license to continue to use the **Software**; or if (a) or (b) cannot be accomplished on terms reasonable to **Us**, remove any infringing work from **You** and refund to **You** the last payment made for a **First Term Subscription Fee** or **Renewal Term Subscription Fee**. **We** are not liable under this indemnity if the infringement results directly or indirectly from: (i) **Your** use of the **Software** other than in accordance with the documentation or in a manner that is in breach of the **Agreement**; (ii) unauthorised copying, modification, adaptation or translation of the **Software**; or (iii) use or operation of the **Software** in combination with equipment, software, materials or services not authorised by **Us** and **You** indemnify **Us** for all losses, costs, expenses and demands that arise from the foregoing. This **clause 9** states **Our** exclusive liability with respect to any claim of intellectual property infringement or other misappropriation and is in lieu of all other remedies, liabilities and obligations.

10. **LIMITATION OF LIABILITY.** **We** are not responsible for and **We** specifically disclaim all liability for any loss, liability, damage (whether direct, indirect or consequential), personal injury or expense of any nature whatsoever which may be suffered by **You** or any third party that may be attributable, directly or indirectly, to the **Software** or to **Your** use of the **Website**. **We** are not liable for any loss or damage that may arise in connection with **Your** use of the **Software** or the **Website** and in no event are **We** liable for indirect, special, incidental or consequential damages or loss of profit or revenue, loss of anticipated savings, loss of chance, loss of opportunity and loss of reputation even if **We** have been notified of the possibility of such damage and notwithstanding any failure of essential purpose of any limited remedy of any kind.
11. **AUSTRALIAN CONSUMER LAW.** Under the Australian Consumer Law included in the Competition and Consumer Act 2010 (Cth) (ACL), consumers have certain rights that cannot be excluded, including guarantees as to the fitness for purpose of goods or services. Nothing in this Agreement will be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the ACL) and which by law cannot be excluded, restricted or modified. This Agreement must be read subject to these statutory provisions. Subject to any consumer rights under the ACL and to the extent permitted by law, **We** limit **Our** liability in respect of any claim under those provisions, at **Our** option, to re-supplying the **Software** or services again; or paying the cost of having the services supplied again.
12. **COMMUNITY FORUMS AND BLOGS.** The **Website** may contain forums where **You** can post messages and content. If **We** provide such features, **You** agree that **You** are solely responsible and liable for **Your** use of such areas. **You** agree not to post any message or content that is unlawful, libellous, defamatory, obscene, pornographic, indecent, lewd, suggestive, harassing, threatening, abusive, inflammatory, fraudulent or otherwise objectionable or that breaches privacy. **You** further agree not to infringe any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any party nor to impersonate any person or entity or otherwise misrepresents **Your** affiliation with a person or entity. **You** may not use the forums for unsolicited promotions, political campaigning, advertising or solicitations. **We** may remove any content that breaches this clause or **Our Privacy Policy** or that **We** regard in **Our** sole discretion as objectionable, unsuitable or inappropriate. **We** are not responsible or liable for any content posted on the forums and **We** do not screen messages before they are posted to the forums.

13. **TERMINATION.** **We** may terminate this **Agreement** immediately by notice to **You** if **You** breach a provision of this **Agreement** and fail to remedy the breach within 14 days. **We** may terminate this **Agreement** on 7 days' written notice for any reason whatsoever. Either party may terminate this **Agreement** if the other party becomes or threatens to become subject to any form of bankruptcy or insolvency administration. Upon termination, **You** are no longer permitted to use the **Software** and **You** must immediately cease to use it and delete or destroy all copies of the **Software** in **Your** possession. Termination of this **Agreement** does not prejudice any rights or any claim that either party may have accrued against the other party up to the date of termination.
14. **GOVERNING LAW.** This **Agreement** and **Your** use of the Website are governed by the laws of New South Wales and **You** and **We** submit to the non-exclusive jurisdiction of the courts of New South Wales and courts entitled to hear appeals from those courts. This **Agreement** contains the entire agreement and understanding between **You** and **Us** about the **Software** and all prior agreements and representations made between **You** and **Us** are superseded by this **Agreement**.
15. **EXPORT.** **You** represent and warrant that the **Software** will not be downloaded or used in, or transported to, a country that is subject to an Australian government embargo, or has been designated by the Australian Government as a "terrorist-supporting" country. **You** must not export or re-export, or permit exportation or re-exportation of the **Software** in violation of any export provisions of Australia or any other applicable law.
16. **GENERAL PROVISIONS.** **A. Relationship** -- This **Agreement** -- does not create any partnership, joint venture or agency relationship between **You** and **Us**. **B. No Authority** -- Neither **We** nor **You** may enter into any agreements or incur any liabilities on behalf of the other party without the other party's prior written consent nor may represent to any person that it has any authority to do so. **C. Publicity** -- **You** agree that **We** can use **Your** logo in presentations to prospective users and customers and on **Our Website**. **You** agree to consider issuing a joint press release with **Us** about **Your** use of the **Software**. All other publicity is subject to **Your** and **Our** prior written approval. **D. Waiver** -- No right under this **Agreement** is waived or deemed to be waived except by notice in writing signed by the party waiving the right. **E. Assignment** -- **We** may assign **Our** rights under this **Agreement** without **Your** consent. **You** may not assign **Your** rights without **Our** consent. **F. Information Provided by You** - We require **You** to provide information such as **Your** name, address, email address, credit card number or other details when **You** place an **Order** on **Us (Information)**. **We** may subsequently

require further details to enable the processing of any additional **Orders** that **You** make. **You** agree to provide **Us** with current, complete and accurate **Information** and **We** agree not to sell or disclose **Your Information** to third parties without **Your** consent.