



MyGuarantee Website Terms Version 2.2

This document sets out the terms and conditions for your access to and your use of the MyGuarantee Platform and website generally.

In these Terms:

Access Credential means a password or other confidential code you, or a person authorised by you, use that enables you to gain access to or use the website.

Anti-Corruption Law means:

- (a) the *Australian Criminal Code Act 1995* (Cth);
- (b) the United States of America *Foreign Corrupt Practices Act of 1977*,
- (c) the United Kingdom *Bribery Act 2010*; and
- (d) any other applicable law which has as its objective the prevention of bribery and corruption.

Application Form means an application to become a Participant, and user of the Platform, in the form nominated by the Operator from time to time.

Associated Person means an officer, employee, agent, contractor or subsidiary of the Operator, or a person controlled by the Operator within the meaning of the *Corporations Act 2001* (Cth), or a person that otherwise performs services for or on behalf of the Operator.

Operator means MyGx Pty Ltd.

Participant or **you** means you and any other person that has agreed to be bound by these Terms.

Product means a product or service made available on the Platform, and the terms of which are set out in Product Rules.

Product Rules means the rules for the operation of the Platform between the Operator and the Participants in relation to a Product.

Platform means the MyGuarantee platform operated by the Operator which provides for the recording of, and communication about, the creation, amendment, performance and other matters in relation to a Product in accordance with Product Rules.

Platform Data means all data and expressions of data that a Participant is able to access, view and modify using the functionality and tools made available on the Platform.

Platform Material has the meaning given to it in clause 7.2(a).

Regulatory Authority means:

- (a) any governmental or local authority any department, minister or agency of any government; and

- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation.

Security Incident means an incident means a compromise of the security of the Platform or website generally that results in the loss, disclosure, alteration or unauthorised access to Platform Data of a Participant.

2. Platform

- (a) Access to the Platform and this website is provided to you by the Operator. By accessing and using the Platform and / or website, you agree to be bound by these Terms.
- (b) You may use the Platform to communicate with the Operator, other Participants, including in relation to Products, and view information relating to Products. However, the Operator is not responsible for any services provided, or purported to be provided, by other Participants, whether connected to Products or otherwise.

3. Communications

- (a) If you give or receive a communication to or from another Participant or the Operator through the Platform, the communication is recorded on the Platform and accessible by you.
- (b) Your communications through the Platform and website generally must be in good faith, relate to a Product to which you are or intend to be a party, and otherwise not disparage or harm other Participants, including the use of language that can be deemed inappropriate.

4. Information stored on the Platform

4.1 Information

You agree that information stored on the Platform and website generally:

- (a) may be accessed by you only if it directly relates to a Product to which you are a party, or is a communication made or received by you;
- (b) which relates to a Product, is stored on the Platform by the Participant that operates the record of that Product;
- (c) which has been provided by you may be used for the purposes of the Platform and website generally, and the services provided by the Operator, and by Participants and the issuer of a Product in connection with the Platform; and
- (d) may be retained on the Platform and website generally and such information cannot be removed or deleted from the Platform.

4.2 Restrictions

You must not:

- (a) access or use, or seek to access or use, information stored on the Platform and website

generally which you are not entitled to access; or

- (b) disclose, or seek to disclose, any information stored on the Platform and website generally provided by anyone else, other than information in relation to a Product to which you are or will be a party, in which case you may disclose, or seek to disclose, such information either in accordance with these Terms, or with the prior written approval of the Participant who provided that information.

4.3 Notification of breach

You must notify the Operator immediately if you become aware or suspect that there has been:

- (a) a breach of your obligations under these Terms; or
- (b) an actual or likely unauthorised access to or disclosure, use or modification of or interference with the information stored on the Platform or website generally; or
- (c) an actual or likely loss of information on the Platform or website generally, or a potential compromise of the preservation of any confidentiality, integrity and availability of information stored on the Platform or website generally.

You must also immediately provide the Operator with all relevant information and reasonable assistance to investigate or remedy any such occurrence.

4.4 Relationship with Operator

- (a) Unless expressly stated otherwise, each Participant is taken to deal with the Operator under these Terms as principal, not on behalf of any other person. The Operator may treat each Participant as principal and not as trustee despite any other fact, matter or circumstance (including, without limitation, any actual or constructive notice of any agency or trustee relationship).
- (b) The Operator is entitled to assume the correctness of any representation or warranty made by a Participant and is not required to conduct investigations, searches or enquiries to confirm their correctness.

4.5 Limitation on Operator's obligations

The Operator is not:

- (a) required to check the authenticity or source of any messages received through the Platform and website generally but it will verify that communications by a Participant are made using the authentication codes supplied by the Operator;
- (b) responsible for the confidentiality of the Access Credentials of any Participant which is used to access the Platform;
- (c) required to keep itself informed about the performance or financial condition of any Participant;
- (d) required to perform an obligation it has to a Participant under these Terms, to the extent that the Participant has not complied with these Terms and applicable law, as relevant to the Operator's obligation in question; or

- (e) responsible for:
- (1) any transaction relating to a Product;
 - (2) any communications made by you with other Participants using the Platform or website generally;
 - (3) any contractual arrangements between the Participant and another person (other than the Operator);
 - (4) any change in the status, financial condition, affairs or creditworthiness of a Participant or another person;
 - (5) any Participant's maintenance of up to date backups and records;
 - (6) save to the extent anticipated or permitted pursuant to these Terms, any technology (other than the technology being provided by the Operator as party of the Platform) used by a Participant to connect to the Platform;
 - (7) any taxes, levies, fees or charges in connection with a Product, any transaction in Products or otherwise; or
 - (8) any act or failure to act by any person other than itself or its officers, employees or agents.

The Operator is not responsible for the contents of the information in any communication transmitted through the Platform or on the website generally. The contents of the information in any communications transmitted by a Participant through the Platform or on the website generally will be the Participant's sole responsibility.

4.6 Disclosure to regulators

The Operator may disclose any matter recorded on, or in connection with, the Platform to relevant governmental agencies, regulators or taxation authorities if it is required to do so by applicable law. Unless otherwise prohibited by law or regulation, the Operator will, where practicable, provide advance notice of such disclosure to the relevant Participants, including the identity of the relevant recipient and the nature of the disclosure where permissible.

5. Limitation of Operator liability

5.1 Responsibility

The Operator is not responsible for the information in any communication transmitted through the Platform or website generally. The information in your communications will be your sole responsibility.

5.2 Limitations

Subject to the relevant provisions of the *Competition and Consumer Act 2010* of Australia (if applicable) and any other rights imposed by law which cannot lawfully be excluded:



- (a) the Operator makes no representations or warranties, either express or implied, as to the availability, merchantability, fitness for a particular purpose, or otherwise (including as to accuracy, authenticity, currency, availability, completeness or quality) with respect to:
 - (1) the Platform and website generally;
 - (2) any communication made through the Platform and website generally;
 - (3) any information stored on the Platform and website generally; or
 - (4) any Product;
- (b) the Operator makes no representation or warranty, either express or implied, that any particular Participant or other person should use the Platform. The Operator recommends that you conduct your own checks and obtain your own advice regarding the person with whom you propose to communicate through the Platform; and
- (c) the Operator excludes all liability in contract and tort (except liability arising as a result of the Operator's failure to comply with these Terms, or any negligence, fraud or willful misconduct of the Operator) relating to or resulting from your use of the Platform and website generally, and for any loss incurred by you directly, or indirectly, including without limitation, as a result of, or arising out of:
 - (1) communications made through the Platform and website generally;
 - (2) information stored on the Platform and website generally;
 - (3) any unauthorised access to the Platform and website generally;
 - (4) any dispute between Participants or any other person;
 - (5) any loss or corruption of any information on the Platform and website generally;
 - (6) any communications that are delayed, blocked, frozen or refused by the Operator, you or another Participant, or any other person;
 - (7) any inaccuracy, error or delay in, or omission from, any information provided to you or another Participant; and
 - (8) any delays, failures, or inaccuracies in the transmission of any information to a Participant, or any other communications that occur without a reasonable basis.

5.3 Liability

To the extent permitted by law, the Operator is not liable to you in connection with the Platform or your use of the Platform or website generally, or for any other common law, equitable or statutory cause of action arising from, or in connection with, the Platform or your use of the Platform and website generally (including under an indemnity) for:

- (a) any loss arising in connection with the terms of any Product;
- (b) punitive or exemplary damages of any kind; or

- (c) loss of goodwill, loss of savings, business profits, revenue or opportunity arising out of, or in connection with, the Platform or your use of the Platform and website generally.

Except where to do so would contravene any law in Australia, in no event will the Operator be liable for any indirect, special or consequential loss (including, without limitation, loss of profits or revenue (actual or anticipated), or otherwise resulting from your, or another Participant's, use of the Platform).

5.4 Contribution

The Operator is entitled to a reduction in any liability it may have in connection with the Platform or at law, to the extent that the acts or omissions of any other person caused or contributed to the loss or damage (including in relation to any indemnity).

5.5 Mitigation

You must take all action reasonably practicable to mitigate any loss or damage suffered by the Operator in connection with the Platform or your use of the Platform and website generally (including in the context of any indemnity).

5.6 Relevant law

The liability of the Operator to you or any other person for any loss (whether direct or indirect) incurred in connection with the Platform or your use of the Platform and website generally will be determined under the laws of the State of New South Wales, Australia.

6. Indemnity of Operator

6.1 Indemnity

You indemnify and keep the Operator indemnified against, and must pay the Operator on demand against, all claims, actions, suits, losses, defaults, liabilities, expenses, costs (including legal costs) and damages that the Operator may incur or suffer arising out of your use of the Platform and website generally including, without limitation:

- (a) a claim (arising out of your use of the Platform and website generally in contravention of these terms) from you, any other Participant, any Issuer or any other person against the Operator in connection with a Product, other than for the Operator's failure to comply with these Terms; or
- (b) your failure to comply with any law, regulation, directive or sanction, as applicable to the use of the Platform.

6.2 Scope

The indemnity given by you under these Terms:

- (a) is a continuing obligation and continues after your access to the Platform is terminated (regardless of the reason for the termination of access); and
- (b) does not apply to any claims, actions, suits, losses, defaults, liabilities, expenses, costs or damages which arise as a direct result of the fraud, negligence or willful misconduct of the Operator.

7. Intellectual Property

7.1 Acknowledgment

You acknowledge that all intellectual property rights in the Platform and website generally throughout the world (except for any intellectual property rights in your content) belong to the Operator, and its licensors and that you have no intellectual property rights in, or to, the Platform and website generally other than the right to use the Platform and website in accordance with these Terms.

7.2 Grant of rights in the Platform and Platform material to you

- (a) Provided that you remain in compliance with all of your obligations under these Terms and Product Rules, the Operator grants to you the right to access the Platform and the content and materials (including any and all information, software, artwork, text, video, audio, pictures, documents and other content owned by the Operator and by the Operator's licensors and made available to you through the Platform (**Platform Material**)) made available on the Platform, and to download certain Platform Material. In granting such rights to you, you acknowledge and agree that the Operator has been authorised by other Participants of the Platform to grant such access rights to content and material that they have uploaded or made available via the Platform which forms part of the Platform Material.
- (b) Without limiting the foregoing, you undertake that you will not do any act or engage in any practice that would put the Operator in breach of its obligations owed to other Participants in connection with those elements of the Platform Material that are owned by other Participants.

7.3 License to Operator and other Participants

- (a) You grant to the Operator and (through the Operator) other Participants a non-exclusive, perpetual and irrevocable, royalty-free and worldwide license of the intellectual property rights in your Platform Material that you submit or upload via or through the Platform and website generally.
- (b) The purpose of such license you grant to the Operator is to enable the Operator to provide the Platform and to perform its obligations owed to you under these Terms.
- (c) The license granted to other Participants of the Platform is for the purpose of enabling their participation in and use of the Platform and the tools and functionality made available through the Platform to all Participants.

7.4 Changes to material

The Operator may update and change the Platform Materials, including by removing Platform Materials, at any time in its discretion. In the event that such materials relate to your rights with respect to your communications or documents, the Operator will provide you with 15 days' notice prior to updating or changing these materials.

7.5 Reproductions

Without limiting the generality of the rights granted to you under this clause 7, you may download or print extracts of records of the Products stored on the Platform and accessible by you for your own use, but

otherwise you may not reproduce any part of the Platform or the Operator's website without its express prior consent. To the extent that the Platform contains functionality that allows you to access or download specific materials through the Operator's website, your use of that functionality and the downloaded materials may be subject to separate terms and conditions which you will be asked to read and accept at the relevant time.

7.6 Links

The Platform and the Platform Materials may contain links to other websites operated by third parties who are not associated with the Operator, these links are provided for your information only. The Operator has no control over those websites, materials contained in them or the services made available through them, and accepts no responsibility for them or for any loss or damage that may arise from your use of them.

8. Periods where system is unavailable

8.1 No representation

The Operator makes no representation that all services and functions offered through the Platform are available at all times. In the event that the Platform is not available, the Operator will seek to implement its business continuity and disaster recovery plan in relation to the Platform.

8.2 Outages

- (a) The Platform may be unavailable for a number of reasons, including due to scheduled outages or due to factors beyond the Operator's control, such as your internet connection.
- (b) If you have a problem, you should contact the MyGuarantee Support Team by email at support@myguarantee.com.au or phone on 1300 156 703.

9. Security Requirements

9.1 Malware

- (a) You must do everything necessary to avoid introducing viruses or other harmful or surreptitious code (each a **Malware**) into the Platform or website generally, or the system of the Operator or the system of any Participant relating to its use of this Platform.
- (b) If you detect (or reasonably suspect) that Malware has been introduced into a Participant's or the Operator's system through the Platform or website generally:
 - (1) you must inform the Operator upon such detection (or reasonable suspicion) as soon as practicable; and
 - (2) you must provide all relevant information and reasonable assistance to the Operator in order to allow the Operator to reduce the effects of the Malware on your systems and, if the Malware causes you to lose any data or if the Malware adversely affects your access to the Platform or website, to assist you to mitigate the impacts and restore access to the Platform and website (as applicable) or loss of data (as applicable).

9.2 Operator's instructions



You must comply with any reasonable instructions the Operator gives you about how to use the Platform and website generally and must not do anything that interferes with or adversely affects the normal operation of the Platform and website generally (including the ability of other Participants to access or use the Platform or any associated website).

9.3 Security

You are responsible for ensuring the security of the systems and devices that you use to access the Platform and website generally, including through use of appropriate virus checking and other security software.

9.4 Obligations of the Participants in respect of data security

- (a) A Participant must comply with all reasonable requests and directions of the Operator regarding access to and use of the Platform and website generally and the security and integrity of the Platform and the Platform Data.
- (b) Each Participant must:
 - (1) take all reasonable measures to protect the security of the Access Credentials and the Platform Data accessed through the Platform by the Participant; and
 - (2) not share, disclose or divulge any Access Credentials to any third party.
- (c) A Participant may not:
 - (1) penetrate or breach the security of the Platform, the generally, or any Platform Data, or otherwise interfere with the normal functions, operation and performance of the Platform or website generally;
 - (2) circumvent any technological or organisational measures implemented by the Operator to protect the Platform, the website, and Platform Data;
 - (3) circumvent any other security features of the Platform or website; and
 - (4) attempt to, or procure, permit or assist any third party to do any of the foregoing.
- (d) A Participant must not access or use, or seek to access or use, the Platform Data of any other Participant, unless the other Participant specifically authorises the first-mentioned Participant's access to or use of the second Participant's Platform Data (including through the functionality or tools made available through the Platform).
- (e) Without limiting these Terms, a Participant must notify the Operator immediately if the Participant becomes aware or suspects that:
 - (1) any Access Credentials used by the Participant have become known or are suspected to have become known to an unauthorised person;
 - (2) a person purporting to be a Participant or the authorised person of a Participant is not who they have claimed to be through use of the Platform or website generally; and

- (3) any Access Credentials have been lost or stolen or that an unauthorised person has gain access to the Access Credentials.
- (f) Where the Participant notifies the Operator under clause (e), the Participant acknowledges and agrees that, in order to protect the Platform, the website and the Platform Data, the Operator may disable the ability of the Access Credentials in question to access the Platform and website generally while the Operator investigates the circumstances notified to the Operator. The Operator is not required to issue replacement Access Credentials to the Participant until the Operator has completed its investigation and is satisfied (acting reasonably) that the Participant has not been responsible for the actual or potential misuse of the Access Credentials.

9.5 Notification of and response to Security Incidents

- (a) The Operator will promptly notify affected Participants of a Security Incident that affects their Platform Data.
- (b) If the Operator notifies a Participant of a Security Incident, the Participant must provide all reasonable assistance and cooperation to the Operator in investigating and assessing the Security Incident (including the circumstances surrounding that Security Incident) and to mitigate, contain and remediate the Security Incident.

9 Privacy and confidentiality

2.1 Privacy policy

The Operator's privacy policy sets out its commitment to protecting personal information. A copy of the Operator's privacy policy is available by visiting the website at myguarantee.com.au. The Operator may use personal information as set out in the privacy policy to contact a person, or send information, in relation to the Platform and website generally.

2.2 Consents

- (a) You consent to the Operator disclosing any information relating to the Platform and website generally, including your use of the Platform or agreement to use the Platform (including, without limitation, any information provided by you to the Platform), to each Participant nominated by you or to any regulatory body as the Operator considers necessary or appropriate in connection with the provision of the Platform to you.
- (b) You consent to your name, ACN/ABN/ARBN (if applicable) and address being made available to all Participants on the Platform.

10 Termination

- (a) The Operator may terminate your access to and use of the Platform and website in the following circumstances:
 - (1) you no longer satisfy the requirements to use the Platform set out in these Terms and the Product Rules;
 - (2) you use the Platform other than in accordance with these Terms and the Product Rules;



- (3) the Operator determines that, due to your misconduct, your termination is necessary to preserve the integrity, security, reliability or stability of the Platform or website generally;
 - (4) the Operator considers it reasonably necessary to protect itself or you from incurring damage; or
 - (5) the Operator reasonably believes that you pose a security, fraud or material business risk to it or other Participants.
- (b) The Operator will provide you, and each Participant who is a counterparty to a Product to which you are a party, with reasonable notice (before terminating your use of the Platform (unless the termination is made to address an immediate risk in which case you will be notified as soon as practicable afterwards)).

11 No relationship between parties

Nothing contained or implied in these Terms constitutes you or the Operator as the partner, agent or legal representative of, respectively, any other Participant or the Operator for any purpose or creates any partnership, agency or trust. These Terms do not grant you the authority to bind, respectively, any other Participant or the Operator in any way under these Terms.

12 Severability

If the whole or any part of a provision of these Terms is void, unenforceable or illegal in a jurisdiction, it is severed to that extent for that jurisdiction. The remainder of these Terms, including any part of a provision which is not void, unenforceable or illegal, has full force and effect and the validity or enforceability of that provision (or that part of a provision) in any other jurisdiction is not affected.

This clause has no effect if the severance alters the basic nature of these Terms or is contrary to public policy.

13 Governing law and jurisdiction

These Terms will be governed by and interpreted in accordance with the laws of New South Wales, and the Operator and you submit to the non exclusive jurisdiction of the courts having jurisdiction there.