

Kolmeo Connect – User Terms of Use for tenants and owners

1 TERMS OF USE

- a. Please read these Terms of Use carefully as they apply to:
 - i. Your use of the end-to-end property administration software provided by Kolmeo Pty Ltd ACN 132 055 648 (**Kolmeo, We, Us, Our**) known as 'Kolmeo Connect', available as:
 1. a Mobile Application (which enables users to access Kolmeo's Services using a compatible mobile device, available for download from the Apple App Store and Google Play Store and such other digital distribution platforms as may be specified by Kolmeo from time to time) and/or
 2. a web-based platform accessible through www.kolmeo.com (**Our Website**),
and more accurately described on Our Website (**Kolmeo Software**); and
 - ii. the provision of any support services Kolmeo may provide from time to time (**Support Services**),

(provision of access to the Kolmeo Software and/or the Support Services (as the context dictates) is herein referred to as the **Services**). By accessing or using the Services, You agree to be bound by these Terms of Use.
- b. In addition to facilitating property administration, Kolmeo Software also facilitates the transfer of money through third party software technology that acts as the interface between a supplier and an acquirer for the purpose of validating the credentials you use to obtain access to the Kolmeo Software including a username and password (**Access Credentials**) and ensuring sufficient funds are available from the payor's bank account or credit card or debit card (**Payment Gateway**).
- c. We may revise these Terms of Use from time to time by providing You with at least 15 days' prior notice.
- d. Our privacy policy, located on Our Website, is incorporated into these Terms of Use and may be updated by Us from time to time. You consent to being contacted by Kolmeo in accordance with our privacy policy and these Terms of Use.
- e. The Services are to be used within Australia only.

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2 ACCESS TO SERVICES

2.1 Access

- a. We:
 - i. will provide the Services to You in accordance with these Terms of Use and all laws applicable to us; and
 - ii. grant You a limited, non-exclusive, non-transferrable right to access and use the Services, strictly in accordance with these Terms of Use.
- b. Access to the Services may only be available to compatible devices that meet specific system or software requirements specified by Kolmeo from time to time on Our Website. We give no warranty or guarantee that access to or use of the Services will be available to all devices and You are solely responsible for ensuring that any device You use meets the system, software or other requirements specified by us from time to time on Our Website.

2.2 Use of the Services

- a. You may only access and use the Services for lawful purposes and in accordance with:
 - i. these Terms of Use;
 - ii. any manuals and other material (whether in printed or electronic format) relevant to the operation of the Kolmeo Software, including user manuals, programming manuals, modification manuals, flowcharts, drawings, instructions and any similar documentation which have been prepared by or on behalf of Kolmeo to assist or supplement the understanding or application of the Kolmeo Software (**Documentation**);
 - iii. any reasonable directions given by Kolmeo; and
 - iv. applicable laws and regulations.
- b. You must not, nor cause or permit a third party to:
 - i. access and/or use the Services in a manner or for a purpose which:
 1. is improper, immoral, illegal or fraudulent;
 2. infringes any person's intellectual property rights including without limitation the following rights:
 - (I) copyright, trademarks, patents, designs, circuit layout rights, trade secrets, know-how and any right to have confidential information kept confidential.
 - (II) any application or right to apply for registration of any of the rights referred to in paragraph (I); and
 - (III) all rights of a similar nature to any of the rights in paragraphs (I) and (II), that may subsist anywhere in the world,

(Intellectual Property Rights); or

 - 3. restricts or interferes with the provision of the Services by Kolmeo to any other users;
- ii. reverse engineer, reverse assemble, reverse compile, copy, duplicate, modify, make derivative works of, re-sell, re-supply or share all or part of the Services (or any of Kolmeo's Intellectual Property Rights in the Services);

- iii. enter into a transaction relating to access or use of the Services with, or disclose any part of the Services (or any part of Kolmeo's Intellectual Property Rights) to a party other than Kolmeo without the written consent of Kolmeo;
 - iv. gain, attempt to gain or assist or request any person to gain unauthorised access to any data, information, content or other material uploaded to the Kolmeo Software (**Content**) via Access Credentials and/or Services, computer systems or networks connected to the Services, including through hacking, password mining or any other means;
 - v. transfer or allow to be transferred Your Access Credentials between or amongst other individuals or systems; or
 - vi. allow any other person to access, use or modify the Services by using Your Access Credentials.
- c. You acknowledge and agree that You are solely responsible for any use of the Services or Documentation under your Access Credentials (or, if you are a Landlord, an Agent, or the Personnel of an Agent, pursuant to Your Agent Authority (as defined in clause 2.3 below)) by:
- i. You;
 - ii. an Agent (as defined in clause 2.3 below);
 - iii. an Agent's officers, employees, agents, contractors and subcontractors (**Personnel**) or any third party,

whether authorised or not and indemnify and will defend and hold harmless, Us and Our Personnel in relation to any claim, notice, demand, action, proceeding, litigation, investigation, judgment or **Liability** (being any liability or obligation (whether actual, contingent or prospective) including any loss, damage, cost, charge liability (including tax liability) or expense (including legal costs and expenses), irrespective of when the acts, events or things giving rise to the liability or obligation occurred), however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute (**Claim**) by a third party relating to:

- iv. their use of the Services;
- v. the Content; and
- vi. the disclosure, transfer or exchange of the Content by Kolmeo to or with the provider of any third party software, application, product or service integrated with or used in conjunction with the Services from time to time (**Approved Third Party Application**).

2.3 Authorisation of use of the Services by Agent or Agent's Personnel

- a. If You are a party who lets, or offers, attempts or agrees to let, real property (**Landlord**) you may authorise:
 - i. a third party who is an agent licenced under applicable legislation, regulations or rules relating, or relating among other things to the leasing of real property and/or the regulation of real estate agents (**Agent**); and
 - ii. an Agent's Personnel,

to use the Services on Your behalf, including to initiate the transfer of money by You to the Agent and/or a third party (**Agent Authority**).
- b. You must notify Us in writing if You have given an Agent Authority and provide Us and the Agent with:
 - i. information regarding:

1. the duration of the Agent Authority; and
 2. any restrictions you wish to place on the Agent Authority; and
- ii. any other information relating to the Agent Authority reasonably required by Us, (the **Authority Information**).
- c. You acknowledge and agree that on Our receipt of the Authority Information, We will, to the extent possible, issue the Agent with the necessary credentials and authorisations which will allow the Agent and the Agent's Personnel to use the Services on Your behalf, as authorised, including to initiate the transfer of money by You to the Agent and/or a third party (**Agent Credentials**).

2.4 Suspending or Terminating Access to the Services

- a. You acknowledge that immediate steps may be taken by Us to:
- i. disable Your Access Credentials and any Agent Credentials issued under clause 2.3c;
 - ii. suspend or revoke your Agent Authority (and you authorise Us to do so); and/or
 - iii. suspend or terminate Your access to the Services,
- if:
- iv. You or an Agent acting on Your behalf use the Services in a manner that Kolmeo reasonably considers to be inappropriate, threatening, abusive, discriminatory, offensive or disparaging;
 - v. Your Access Credentials or any Agent Credentials issued under clause 2.3c are lost, stolen, missing or otherwise compromised;
 - vi. We become aware of any breach, or We reasonably believe there has been a breach or will be a breach, of these Terms of Use by You or an Agent acting on Your behalf; or
 - vii. the Payment Gateway Provider (as defined in clause 3d.i) and/or any of its service providers requests that we do so.
- b. We may terminate this Agreement:
- i. at any time and without cause by providing You with not less than 30 days' written notice of termination;
 - ii. immediately if the Platform Services Agreement (as defined in clause 3h) is terminated; or
 - iii. immediately if a Force Majeure (as defined in clause 2.6b.iv) event has continued for more than 60 consecutive days.
- c. To the maximum amount permitted by law, We exclude all Liability to You if We suspend or terminate the Services under this clause.
- d. The termination of this Agreement is without prejudice to the parties' other rights accrued under this Agreement or at law.

2.5 General restrictions

In using the Services, You must not, nor cause or permit a third party to:

- a. provide Us with inaccurate or incomplete information;
- b. violate any applicable laws, or use the Services for any purpose that is unlawful;

- c. distribute viruses, spyware, corrupted files, or any other similar software or programs that may damage the operation of any computer hardware, software or the Services;
- d. engage in any other conduct that is improper or brings Us or the Services into disrepute;
- e. engage in, or otherwise accept payments in connection with, a Prohibited Transaction (as defined in clause 4a.i.2 below); or
- f. knowingly, by any act or omission, cause Us, the Payment Gateway Provider (as defined in clause 3d.i below) and/or any of its service providers to:
 - i. breach any law, industry code or technical standard; or
 - ii. jeopardise Our or their participation in any payment system, Card Network (as defined in clause 4a below) or the New Payments Platform promoted and operated by NPP Australia Limited ABN 68 601 428 737.

2.6 Service availability and support

- a. You expressly acknowledge and agree that Service continuity is not assured, the Services and access to the Content are provided on an 'as is' basis and Kolmeo is not liable for any failure in Service continuity.
- b. You agree that on occasion the Services, Content and/or Our Website may be unavailable or have limited availability including:
 - i. to permit routine or emergency maintenance to take place;
 - ii. to permit upgrades or other development activity to take place;
 - iii. due to technical malfunctions of Your software, equipment or infrastructure (e.g. telecommunications, connectivity, network congestion, or delays);
 - iv. due to any event caused by occurrences beyond a party's reasonable control, including natural disasters, acts of terrorism, riots, civil disturbances and epidemics, pandemics, war, government regulations, policies or actions enacted or taken subsequent to Your entry into these Terms of Use for provision of the Service, or any labour, telecommunications, internet or other utility failure, interruption, shortage, outage, strike or curtailment or the acts or omissions of a third party (**Force Majeure**); or
 - v. due to issues associated with a Payment Gateway.
- c. In the case of technical problems that adversely affect Your use of the Services, You must make all reasonable efforts to investigate and diagnose the problem. If You still need technical assistance after first attempting to investigate, diagnose and resolve the problem, or You require any assistance with the use of the Services, You may seek assistance via the contact details provided for assistance in the Kolmeo Software.
- d. We may impose reasonable usage limitations on Services from time to time, at Our discretion.
- e. Kolmeo may temporarily limit or suspend the availability of all or part of the Services or Content if it is reasonably necessary (including for security, maintenance or public safety reasons, or if there are interoperability, data protection or other operational or technical reasons) and where practicable We will notify You in advance.

2.7 Modifications and updates

Kolmeo may modify or update the Kolmeo Software from time to time in its discretion.

3 TRANSFER OF MONIES

- a. We do not handle any transfers of funds using Kolmeo software (**Transactions**) between You (or, if you are a Landlord, an Agent, or the Personnel of an Agent, pursuant to Your Agent Authority) and any other party.
- b. All Transactions will be processed and validated via a Payment Gateway.
- c. You acknowledge and agree that once a Transaction is initiated by You, the money may, to the extent permitted by law, be disbursed by the recipient at their absolute discretion. Such disbursement may include (but is not limited to) disbursement by Landlords:
 - i. to Agents for commissions; or
 - ii. to suppliers for property maintenance services and other costs.
- d. You acknowledge and agree that:
 - i. Kolmeo may engage Assembly Payments Platform Pty Ltd (and its related companies) and/or any other person, from time to time to provide a Payment Gateway (**Payment Gateway Provider**);
 - ii. Kolmeo does not act for or on behalf of a Payment Gateway Provider; and
 - iii. beyond engaging the Payment Gateway Provider to provide a Payment Gateway, Kolmeo has no influence or control over any Transaction initiated by You.
- e. Kolmeo makes no representations or warranties regarding the security of any Payment Gateway.
- f. When initiating any Transaction, You acknowledge and agree that:
 - i. subject to clause 3h, Your use of any Payment Gateway is subject to the relevant Payment Gateway Provider's terms of use which apply to You (**Payment Gateway User Agreement**), including any such Payment Gateway Provider's terms annexed to these Terms of Use; and
 - ii. Your transmission of data and transfer of money using the Payment Gateway is otherwise entirely at your own risk.
- g. You must provide to a Payment Gateway Provider and its service providers, directly or through Us, all necessary information and authorisations to enable a Payment Gateway Provider and its service providers to:
 - i. accept payments from You; and
 - ii. comply with their obligations and exercise their rights under the rules of any payment system, including BPAY Payments the electronic payments service promoted and operated by BPAY Pty Limited ACN 079 137 518.
- h. If there is any inconsistency between the terms of this Agreement, the agreement for platform services entered into by Us and a Payment Gateway Provider (**Platform Services Agreement**) and/or the Payment Gateway User Agreement, the terms will be given priority in interpretation and application as follows to the extent of any inconsistency:
 - i. the Platform Services Agreement;
 - ii. this Agreement; and
 - iii. the Payment Gateway User Agreement.

4 PAYMENT DISPUTES, MANDATORY REVERSALS AND REFUNDS

- a. For the purposes of this Agreement, a **Mandatory Reversal** is a reversal which refunds a party to the Transaction, up to the full amount of the Transaction as a result of:
- i. the Transaction being:
 1. unauthorised, unlawful, suspicious or fraudulent; or
 2. related to businesses, business activities or business practices that are prohibited by the Payment Gateway Provider, a Card Brand (as defined below) or financial institution involved in the Transaction (**Prohibited Transaction**); or
 - ii. a claim in respect of which the Payment Gateway Provider is required to refund a party to the Transaction up to the full amount of the Transaction under:
 1. the terms of its arrangements with its banks or other financial institutions including any applicable credit card scheme, debit card scheme or other banking or payment industry rules or regulations (**Banking/Payment Arrangements**); or
 2. any law,

and includes any **Chargeback** under the Banking/Payment Arrangements, being a Transaction that the network that powers credit card and debit card transactions for Visa and MasterCard or such other networks that power credit card and debit card transactions as agreed by Kolmeo and the Payment Gateway Provider (**Card Network**) reverses by returning money to a Kolmeo software user pursuant to the relevant Card Network rules.

- b. If a Transaction is disputed or a Mandatory Reversal or a voluntary reversal of a Transaction approved by You (**Refund**) is being sought by a Platform User, You agree:
- i. to be bound by any payment industry or banking rules and regulations applicable to the dispute or Mandatory Reversal;
 - ii. to take all reasonable action to assist in resolving any dispute involving a Transaction, potential Mandatory Reversal or Refund in a timely manner;
 - iii. to provide timely assistance and information reasonably requested by Us for provision to a relevant party, including a Card Network, the Payment Gateway Provider, the Payment Gateway Provider's processor or any financial institution;
 - iv. to provide Your instructions (if any) in relation to any relevant disputed Transaction, potential Mandatory Reversal or Refund:
 1. to the Payment Gateway Provider; or
 2. to Us to provide to the Payment Gateway Provider; and
 - v. that if a Refund is being sought, to provide, in a timely manner, the Your instructions including whether to accept or reject the Refund request.
- c. You authorise the Payment Gateway Provider to give effect to:
- i. the payment of any amount to settle a disputed Transaction as authorised by you;
 - ii. Mandatory Reversals; and
 - iii. Refunds,
- including by direct debit of the relevant amount from your nominated account or credit card or debit card.

5 FEES

5.1 Payment

- a. For each Transaction initiated by You, (or, if you are a Landlord, an Agent, or the Personnel of an Agent, pursuant to Your Agent Authority), You must pay Us:
 - i. the relevant Transaction Fee as that term is defined in the Transaction Fees Table annexed to this Agreement; and
 - ii. if the circumstances set out in the Additional Fees Table annexed to this Agreement apply to You, the relevant Additional Fee as that term is defined in the Additional Fees Table,(the **Fees**), unless Your Agent (if you are a Landlord) or Your Landlord's Agent (if you are a person who rents, or offers, attempts or agrees to rent real property (**Tenant**)) has agreed with Us to pay the applicable Transaction Fees and/or the Additional Fees.
- b. You authorise the Payment Gateway Provider to:
 - i. collect Transaction Fees on Our behalf by adding the relevant Transaction Fee to the amount payable in respect of a Transaction; and
 - ii. collect any Additional Fees on Our behalf by direct debit from Your nominated account or credit card or debit card.
- c. You must provide a completed Direct Debit Authority to Us to authorise the direct debit of:
 - i. money to give effect to Transactions initiated by You;
 - ii. Fees; and/or
 - iii. any other amounts due and payable by You under or in accordance with this Agreement,from Your nominated account or credit card or debit card.
- d. If the Payment Gateway provider does not collect the Fees under clause 5.1b, We may invoice You for the Fees, in which case the Fees are due and payable seven days from the date of the invoice (or the next day on which the banks are open for business in Melbourne, Victoria other than a Saturday, Sunday or public holiday in Melbourne, Victoria (**Business Day**)).
- e. Unless otherwise stipulated, the Fees do not include any applicable goods and services tax (**GST**) or other applicable taxes and in addition to the Fees, You must pay the applicable GST or other applicable taxes as directed by Us.

5.2 Changes to Fees

- a. We may change the Fees at any time by providing You with at least 30 days' notice.
- b. If such changes to the Fees are not acceptable to You, You may terminate this Agreement by:
 - i. giving Us notice of such termination;
 - ii. instructing Us that any Agent Authority given by You has been revoked; and
 - iii. ceasing to use Your Access Credentials to access the Services.

6 YOUR CONTENT

- a. We acknowledge and agree that all rights, title and interest in and to the Content will at all times remain owned by You.
- b. You acknowledge that Kolmeo may use the Content and information derived from the Content to produce any data, information, content or other material that is de-identified such that it does not identify any individual, including You (**De-identified Data**), which De-identified Data may include similar content and information from other customers of Kolmeo. Kolmeo owns all right, title and interest in and to the De-Identified Data and information and may use and commercialise the De-Identified Data and information at its absolute discretion.
- c. You are responsible for ensuring the accuracy and completeness of the Content You upload to the Kolmeo Software.
- d. You must not upload any Content that is unlawful, offensive, discriminatory, disparaging or would otherwise cause you to breach these Terms of Use.
- e. You are responsible and must adopt reasonable measures to limit Your exposure to the potential loss, corruption, disclosure and damage of the Content. To the maximum extent permitted by law, Kolmeo expressly excludes Liability for any loss of Content no matter how caused.
- f. You acknowledge and agree that Kolmeo is not responsible for any errors, omissions, losses or damages of any kind resulting directly or indirectly from any inaccuracies in Content provided by You or any failure by You to ensure the integrity, completeness or accuracy of Content before providing it to Kolmeo or inputting it into the Services.
- g. You warrant that:
 - i. You have the right to, or have otherwise obtained all licences, consents, authorisations and approvals and made all disclosures necessary to, collect, store, disclose, use, upload, reproduce, permit Kolmeo to reproduce and/or transfer the Content using the Services, including any **Personal Information** (as defined in the *Privacy Act 1988* (Cth) (**Privacy Act**)) included in the Content;
 - ii. the Content will not violate or infringe upon the rights (including Intellectual Property Rights) of any other person;
 - iii. the Content will not contain a virus or other harmful component; and
 - iv. the Content will comply with any other guidelines specified to You by Us.
- h. If You access or use (or request to access or use) an Approved Third Party Application, You:
 - i. acknowledge and agree that this may be subject to separate legally binding terms of use and separate privacy policy of the provider of the Approved Third-Party Application (**Third Party Terms**);
 - ii. warrant that You have read and understood and agreed to comply with Third Party Terms;
 - iii. consent to Us disclosing to, transferring to and otherwise exchanging with the provider of the Approved Third Party Application all Content (including Personal Information) as may be required for You to use the Approved Third Party Application with the Services; and
 - iv. warrant that You have the right to, or have otherwise obtained all licences, consents, authorisations and approvals and made all disclosures necessary to permit Kolmeo to disclose to, transfer to and otherwise exchange with the provider of the Approved Third Party Application all Content (including any Personal

Information) as may be required for You to use the Approved Third Party Application with the Services.

- i. We may, without Notice to You, review, modify or remove any of Your Content in Our absolute discretion where We reasonably believe it violates these Terms of Use.

7 HOSTING OF CONTENT

- a. You acknowledge that We engage Microsoft Corporation (and its related companies) to provide Content storage services and to host the Services, and may engage any other person from time to time to provide hosting and storage services in connection with the Services and Content (**Hosting Service Provider**).
- b. The Hosting Service Provider may transmit, maintain and store all or parts of the Content (including Personal Information) on multiple servers across various jurisdictions. Servers in which Content (including Personal Information) may be stored by the Hosting Service Provider are currently located in Australia, although additional or other locations may be used by the Hosting Service Provider in the future, including overseas locations.
- c. Acknowledging all of the above, by providing Kolmeo with Content (including Personal Information) or by accessing or using the Services, You:
 - i. consent to Kolmeo disclosing and transferring Content (including Personal Information) to its Hosting Service Provider for the purpose of allowing the Hosting Service Provider to host all Content necessary to support the Services and for Kolmeo to provide the Services to You;
 - ii. consent to Kolmeo and the Hosting Service Provider transmitting, maintaining and storing Content (including Personal Information) between and on servers that may be located overseas; and
 - iii. agree that the requirement under the Privacy Act for Kolmeo to ensure its Hosting Service Provider and any other third-party provider it may use from time to time comply with applicable Australian privacy laws in respect of Content (including Personal Information) does not apply.
- d. You acknowledge and agree that the transmission of Content (including Personal Information) between Kolmeo and its Hosting Service Provider is necessary for Kolmeo to maintain and provide the Services to You.
- e. You acknowledge and agree that We may engage other Content storage providers or store Content on servers in other locations in the future and will update these Terms of Use if that is the case.

8 THIRD PARTY CONTENT

The Kolmeo Software may link to third party websites or feeds that are connected or relevant to the Kolmeo Software. The availability of any link from the Kolmeo Software does not imply that Kolmeo endorses, approves, recommends or accepts responsibility for those websites or feeds, or their content or operators. To the maximum extent permitted by law, Kolmeo excludes all responsibility and Liability for those websites and feeds, including responsibility and Liability for any infringement of third-party Intellectual Property Rights arising therefrom.

9 INFRINGING OR OBJECTIONABLE CONTENT

If You believe the Services contain elements that are objectionable, or infringe Intellectual Property Rights or any other rights, please contact Kolmeo at info@Kolmeo.com, and provide particulars of such content and a detailed description of why it is objectionable or infringing.

10 ACCURACY OF INFORMATION

- a. All Services are provided in good faith. We derive Our information from sources which We believe to be accurate and up to date. We, nevertheless:

- i. do not guarantee the information contained within the Services is reliable, accurate, up to date or complete, or that Your access to the information will be uninterrupted, timely or secure;
 - ii. reserve the right to update any information contained in the Services at any time; and
 - iii. to the maximum extent permitted by law, do not accept responsibility for Liability suffered by You or a third party as a result of Your reliance on the accuracy of information contained in the Services.
- b. The Services are not designed or intended for use (and must not be relied on) as a substitute for accounting, legal or any other advice, including in relation to relevant property and real estate laws and legal requirements, investment reporting, compliance or other associated matters.
 - c. We do not warrant that Your use of the Services will make You compliant with the relevant laws that affect You or Your business.
 - d. You must not rely on any information provided as part of the Services or its availability, and You must make Your own independent assessments with the aid of qualified independent advice.
 - e. The Services do not constitute the provision of 'professional advice' or 'general advice' as those terms are defined in the *Corporations Act 2001* (Cth) (**Corporations Act**) and *Corporations Regulations 2001* (Cth).

11 SPECIFIC WARNINGS AND DISCLAIMERS

- a. You must only use the Services for lawful purposes and ensure that Your access to and the use of the Services is not illegal or otherwise prohibited by laws, regulations or professional conduct obligations which apply to You.
- b. You must take Your own precautions to ensure that the processes You employ for accessing the Services do not expose You to the risk of viruses, malicious computer code or other forms of interference which may damage or otherwise compromise Your computer systems, records or data or any access thereto. We recommend that You install and use up-to-date anti-virus, anti-spyware and firewall software on Your computer systems.
- c. To the maximum extent permitted by law, We do not accept responsibility for any interference or damage of any kind and however occurring to Your computer systems which arises in connection with Your use of the Services or any linked website referred to in clause 8.

12 LIMITED WARRANTIES AND LIABILITY

- a. Subject to any Non-Excludable Guarantee, all express or implied guarantees, warranties, representations, statements, indemnities, undertakings terms or conditions relating to these Terms of Use and the Services by legislation, common law, tort, equity, or by course of performance, dealing, trade, custom or usage, are excluded to the maximum extent permitted by law.
- b. In particular, and without limiting paragraph a:
 - i. while We endeavour to provide convenient and functional Services, We do not guarantee that Your requirements will be met or that Your use of the Services will be uninterrupted, timely, error free or that Our Website and associated applications are free of viruses or other harmful components;
 - ii. We cannot be responsible for any loss, corruption or interception which occurs outside of Our computer systems (such as those which occur while information is being sent over the Internet);

- iii. while We have no reason to believe that any information contained in the Services is inaccurate, We do not warrant the accuracy, adequacy or completeness of such information; and
- iv. We do not warrant, endorse, guarantee or assume responsibility for:
 - 1. assets or services advertised, offered, leased, licensed sold or purchased using Kolmeo software and We will not be a party to the underlying arrangement to sell or provide assets or services relating to any Transaction between users of Kolmeo software; or
 - 2. the legality or efficacy of the underlying arrangement to sell or provide assets or services relating to any Transaction between users of Kolmeo software.
- c. Nothing in these Terms of Use excludes, restricts or modifies any guarantee, term, condition, warranty, or any right or remedy, implied or imposed by any legislation which cannot lawfully be excluded or limited, including the Australian Consumer Law contained in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) and equivalent State and Territory legislation (as applicable) (**Australian Consumer Law**) which contains guarantees that protect the purchaser of goods and services in certain circumstances (**Non-Excludable Guarantees**).
- d. If any Non-Excludable Guarantee is implied into these Terms of Use and We are able to limit Your remedy for a breach of the Non-Excludable Guarantee, then Our Liability is limited at our option to:
 - i. the supplying of the Services again; or
 - ii. the payment of the cost of having the Services supplied again.
- e. Subject to any Non-Excludable Guarantee, We will not be liable to You for:
 - i. any incomplete Transaction resulting from:
 - 1. limits on the bank account or credit card or debit card of a party to the Transaction imposed by the party's financial institution or law; or
 - 2. failure by a financial institution to honour any credit or debit to or from any bank account or credit card or credit card;
 - ii. any act, omission, fraud or crime of any third party, including:
 - 1. Your financial institution;
 - 2. any service provider;
 - 3. any Payment Gateway Provider or other payment system provider;
 - 4. any provider of telecommunications services, internet access or computer equipment or software;
 - 5. any mail or delivery service;
 - 6. any payment or clearing house system; or
 - 7. any regulator,

and including where such act, omission, fraud or crime results in a breach of this Agreement by Us; or
 - iii. any circumstance beyond Our control, including:
 - 1. acts of God, fire, flood or other natural disaster;

2. war, riot, strike, terrorism, act of civil or military authority;
 3. equipment failure, computer virus, filtration or hacking by a third party, provided that We have complied with Our obligations under this Agreement and taken reasonable precautions to prevent same; or
 4. failure or interruption of electrical, telecommunications or other utility services.
- f. You acknowledge that that the Payment Gateway Provider and/or any of its service providers may delay or refuse to process a Transaction in certain circumstances, including where the Payment Gateway Provider and/or any of its service providers:
- i. considers, in its discretion, that the Transaction is unauthorised, suspicious, erroneous, fraudulent or a Prohibited Transaction;
 - ii. has any reason to believe that to do so may violate any law, rule, regulation or industry code or standard; or
 - iii. is ordered or requested by a court, tribunal, government or regulatory body to do so
- and, subject to any Non-Excludable Guarantee, We will not be liable to You for any Losses arising as a result of such action.
- g. Subject to clause 12i and Our obligations under the Non-Excludable Guarantees, and to the maximum extent permitted by law, Our maximum aggregate Liability to You and all Invited Users collectively, for all Claims under, or relating to any Claim arising under or in connection with, this Agreement, whether in contract, statute, tort (including negligence), equity or otherwise, is limited to an amount equal to the total Fees You have paid to Us during the twelve month period immediately preceding the first event that gives rise to a Claim.
- h. For the avoidance of doubt:
- i. clause 12g constitutes an aggregate Liability cap under these Terms of Use, even if there are multiple Claims; and
 - ii. each Claim will reduce the amount available in the aggregate Liability cap.
- i. Subject to Our obligations under the Non-Excludable Guarantees, and to the maximum extent permitted by law, We are not liable to You for, and no measure of Liability will under any circumstances include:
- i. special, indirect, consequential, incidental, circumstantial, punitive or exemplary damages or losses; or
 - ii. losses based on loss of profits, opportunity, revenue, goodwill, business, loss on savings on overheads, loss arising from disruption of business, loss of Content or Content use, loss of use of the Services or the inability to use the Services,
- whether arising under contract, in tort (including negligence) or otherwise and even if We have been advised of the possibility of such Liability.
- j. To the extent that the unfair contract terms regime set out in the Australian Consumer Law applies to these Terms of Use:
- i. any clause of these Terms of Use that would, but for this clause 12j, constitute an unfair contract term for the purpose of that regime, is to be read down to the extent required to avoid such an interpretation; and
 - ii. a party may not exercise any right granted to it under these Terms of Use to the extent that the existence of such right would result in the applicable clause being deemed unfair within the meaning of that regime.

13 INDEMNITIES

- a. You indemnify and will defend and hold harmless, Us and Our Personnel against all Claims and Liabilities suffered or incurred by Us that are caused by or arise from:
 - i. any breach of, or wilful or intentional misconduct in relation to, this Agreement by You, including any misrepresentations or breach of representations and warranties contained in this Agreement;
 - ii. any negligent or unlawful act or omission by You;
 - iii. the imposition of a fee, fine or penalty on Us, the Payment Gateway Provider and/or any of its service providers, in relation to the Services, as a result of Your acts or omissions;
 - iv. any use or misuse of the Services by an Agent on Your behalf, in accordance with an Agent Authority; and
 - v. the amount of any disputed Transaction, Mandatory Reversal or Refund that the Payment Gateway Provider pays in relation to a Transaction, for which You are liable, that it is unable to recover from You.
- b. You indemnify Us and Our Personnel in accordance with clause 2.2c.

14 INTELLECTUAL PROPERTY RIGHTS

14.1 Ownership

- a. You agree that We (or Our licensors) own all right, title and interest in and to the Services, Documentation and De-identified Data, including all developments, changes, modifications and updates to the Services, the Documentation or De-identified Data (**Proprietary IP**).
- b. Except as specifically stated under these Terms of Use, nothing in these Terms of Use transfers ownership of (or otherwise grants You any right in) the Proprietary IP.
- c. Unless expressly permitted by non-excludable laws, You must not do, omit to do, attempt to do, or allow anyone to do anything which infringes the Proprietary IP, including:
 - i. copy, modify, duplicate, create derivate works from, frame, mirror, republish, download, display, transmit or distribute any part or all of the Services or Documentation (as applicable) in any form or any means; or
 - ii. decompile, disassemble, reverse engineer or otherwise reduce to human-perceivable form any part or all of the Services.

14.2 Feedback

If You provide Us with any ideas, comments or suggestions in relation to the Services or Documentation (**Feedback**):

- a. all Intellectual Property Rights in the Feedback and anything created as a result of that Feedback (including materials, enhancements, modifications or derivative works) will be owned by Us and/or Our licensors; and
- b. We may use or disclose the Feedback for any purpose.

14.3 Further actions

You agree to execute all documentation necessary in order to give effect to clauses 14.1 and (if required) to cause Your related entities to execute such documentation.

15 REQUIRED INFORMATION

- a. You agree to promptly provide Us, or Your Agent (if you are a Landlord) or Your Landlord's Agent (if you are a person who rents, or offers, attempts or agrees to rent real property (**Tenant**)) with any of the following information at Our or the relevant Agent's request:
 - i. full legal name;
 - ii. email address;
 - iii. current address;
 - iv. month and year of birth;
 - v. social security number or tax file number;
 - vi. bank account details;
 - vii. government issued ID;
 - viii. information necessary for the Payment Gateway Provider to establish accounts, comply with applicable laws and payment industry rules or standards; and
 - ix. any other information reasonably necessary for Us and/or the Payment Gateway Provider to give effect to this Agreement and the delivery of the Services.
- b. If You are operating a registered business (including in the form of a partnership, company, trust or joint venture), You must also provide Us, or Your Agent (if you are a Landlord) or Your Landlord's Agent (if you are a Tenant) with any of the following information at Our or the relevant Agent's request:
 - i. full business name;
 - ii. business address;
 - iii. business EIN or ABN;
 - iv. business telephone number;
 - v. full name and contact details of each of the directors of your business (if any);
 - vi. information necessary for the Payment Gateway Provider to establish accounts, comply with applicable laws and payment industry rules or standards; and
 - vii. any other information reasonably necessary for Us and/or the Payment Gateway Provider to give effect to this Agreement and the delivery of the Services.
- c. We may refuse to permit You to use the Kolmeo Software until the information requested under clauses 15a or 15b (**Required Information**) has been provided to the party requesting it.
- d. You consent to Us and/or the relevant Agent disclosing the Required Information to:
 - i. Your Agent (if you are a Landlord), Your Agent's Landlord (if you are a Tenant) or Us;
 - ii. the Payment Gateway Provider and/or any other party involved in the provision of the Services, to the extent required to deliver the Services; and/or
 - iii. any party as required by law,to be used and stored to the extent required to deliver the Services and/or by law.

- e. You agree to assist Us, or Your Agent (if you are a Landlord) or Your Landlord's Agent (if you are a Tenant) with verifying the Required Information as required by the Payment Gateway Provider in order to deliver the Services.
- f. You consent to Us disclosing to the Payment Gateway Provider any suspected fraud, erroneous or suspicious activity, Transaction or underlying transaction.

16 PRIVACY AND SECURITY

- a. You acknowledge that We may collect Your Personal Information. We will take reasonable steps to comply with any privacy laws applicable to us when collecting, using and/or disclosing such Personal Information in accordance with our privacy policy.
- b. You Consent to Us, Our Hosting Service Provider, and related entities and affiliates releasing Personal Information provided by You to third parties:
 - i. in order to comply with a valid legal or government requirement such as in compliance with any law, regulation, search warrant, subpoena, court order or government order; and
 - ii. in special cases, when We believe it is necessary to share information in order to investigate, prevent or take action regarding any illegal or unauthorised activities or violations of these Terms of Use.

17 FORCE MAJEURE

- a. If a party is unable to perform or is delayed in performing an obligation under these Terms of Use because of a Force Majeure event, that obligation is suspended but only so far and for so long that it is effected by the Force Majeure event.
- b. To the maximum amount permitted by law, We exclude all Liability to You arising from the suspension of an obligation under this clause.

18 GENERAL

- a. Except as expressly stated otherwise in these Terms of Use, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.
- b. This Agreement constitutes the entire understanding between the parties and supersedes all previous negotiations, understandings, representations, warranties, memoranda or commitments with respect to the Services.
- c. This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria, Australia.
- d. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria, Australia and any courts that have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.
- e. Subject to clause 18f, if a provision of these Terms of Use is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of these Terms of Use.
- f. Clause 18e does not apply if severing the provision:
 - i. materially alters the:
 - 1. scope and nature of these Terms of Use; or
 - 2. the relative commercial or financial position of the parties; or
 - ii. would be contrary to public policy.

- g. Each party must do everything reasonably required by the other to give full effect to these Terms of Use.
- h. Except as expressly stated otherwise in these Terms of Use, the rights of a party under these Terms of Use are cumulative and are in addition to any other rights of that party.
- i. A single or partial exercise or waiver by a party relating to these Terms of Use does not prevent any other exercise of any other right.
- j. A party is not liable for any loss, cost or expense of any other party cause or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- k. Provisions of these Terms of Use that are capable of having effect after the termination or expiration of these Terms of Use will remain in full force and effect following the expiration of these Terms of Use even if they are not expressed to have that effect.

19 INTERPRETATION

In these Terms of Use, unless the context otherwise requires:

- a. A reference to:
 - i. a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - ii. a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
 - iii. a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
 - iv. an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;
- b. the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
- c. if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day;
- d. where there are two or more persons in a party each are bound jointly and severally; and
- e. a provision of these Terms of Use must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of these Terms of Use or the inclusion of the provision in these Terms of Use.

ANNEXURE A – Payment Gateway Provider Specific Terms

Assembly Payments

1 Definitions

In this Annexure, the following terms have the corresponding meanings:

Assembly means Assembly Payments Platform Pty Ltd ABN 96 637 632 645;

Cuscal means Cuscal Limited ABN 95 087 822 455;

2 Privacy

You acknowledge that Assembly will provide services to You in respect of a Transaction or Transactions.

By transacting on the Kolmeo Software, You agree to Assembly collecting Your personal information from Kolmeo, or from the financial institution involved in the Transaction, in order to provide You with services. If the personal information is not provided, Assembly may not be able to process Transactions for You.

Assembly may disclose Your personal information to a service provider to verify Your identity or to enable Assembly to provide the services. The disclosure to service providers may include service providers located overseas or who may host or access your personal information overseas.

Assembly may also use Your de-identified personal information for product development and creation of statistical information and data analytics.

A copy of Assembly's Privacy Policy can be obtained at:
<https://assemblypayments.com/company/policies/privacy-policy>

By transacting using the Kolmeo Software, You agree to that Your personal information may be disclosed by Assembly to Cuscal in accordance with Cuscal's Privacy Policy.

A copy of Cuscal's Privacy Policy can be obtained at:
<https://www.cuscalpayments.com.au/privacy/>

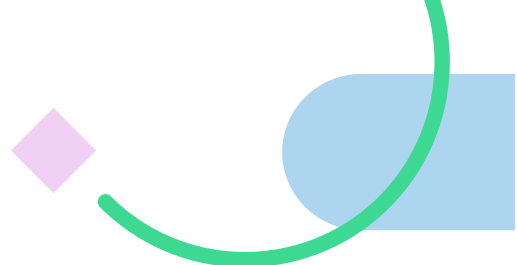
3 Limitation of liability

By renting property, providing agency services or otherwise selling goods or providing services using the Kolmeo Software, You agree to be bound by the Assembly end user agreement which is located at: <https://assemblypayments.com/company/policies/end-user-agreement> (**Assembly User Agreement**) to the extent that it is consistent with these Terms of Use and the Services Agreement between Kolmeo and Assembly relating to the Kolmeo Software (**Services Agreement**). In the event of an inconsistency the terms of the Services Agreement, followed by the terms of these Terms of Use will prevail.

Please read the Assembly User Agreement in full and in particular, note that neither Assembly nor any of its Representatives (as that term is defined in the Assembly User Agreement) are liable for any refunds or reversals of any Transactions and are not liable to You for any Losses (as that term is defined in Assembly's User Agreement) arising out of or in connection with Your use of Assembly's services.

If Assembly's disclaimer of liability is not enforceable for any reason, then, Assembly's maximum aggregate liability arising from or relating to any claim (or series of related claims) by You arising out of or in connection with Assembly's services to You shall not exceed the aggregate amount of 100% of the Fees (as that term is defined in Assembly's User Agreement) received in relation to Your Transactions during the 12 month period preceding the date such claim(s) is/are made.

In no event shall Assembly be liable for any lost profits, data, or any indirect, punitive, incidental, special, consequential, or exemplary damages arising out of, in connection with, or relating to Assembly's services.



Annexure B – Transaction Fees and Additional Fees

All fees listed below are **exclusive of GST**.

Transaction Fees (Australia)

Payment Method	Amount
Visa/Mastercard Credit Card or Debit Card	1.00% + \$0.30 per transaction
Direct Debit	No fee
Direct Credit Payout	No fee
BPAY Transactions	\$0.80

Additional Fees

Additional Fee	Amount	Circumstances when Additional Fee is Payable
Chargeback Fee	\$35.00	Payable for each Chargeback initiated by a Card Network
International Disbursement Fee	\$25.00	Payable for each Transaction that requires money to be transferred to an account outside of Australia
Error/Disputed Payments Fee	\$35.00	Payable for each Transaction that is reversed, other than as a Chargeback, at request of a party