

Our Property Payments End User Agreement

This agreement is effective as of 1st July 2020

1. Payment Collection Services

Our Property Pty Ltd operates a property management platform utilised by Agents, Landlords, Tenants and Tradespersons within Australia. OurProperty Payments Pty Limited is a wholly owned subsidiary of OurProperty and is a licensed real estate agent (collectively referred to as “Our Property” of “we” or “Us”).

This End User Agreement applies to Users of the Platform, and includes Agents, Landlords, Tenants and Tradespersons (collectively “You”)

We have agreed to collect monies for the Landlord and distribute monies in accordance with the Landlord’s instructions, in relation to transactions made via the OurProperty Platform.

In accordance with this End User Agreement (the “Agreement”), You authorise and instruct OurProperty to provide the following services:

- To accept and collect rental monies from the Tenant on behalf of the Landlord;
- To hold such rental monies on trust for the Landlord in Our trust account as nominated by Us;
- To distribute those monies to other accounts, for example Tradespersons, in accordance with the Landlord’s instructions; and
- To forward those monies to the Landlord’s Account.

(collectively, the “Collection Services”).

2. Definitions

- **Account** means a depository account with a financial institution designated by You for the payment or receipt of monies pursuant to this Agreement.
- **Agent** means a property agent, as defined by the relevant legislation, registered to the Platform and appointed by the Landlord to provide property management services for a property.
- **Card Network/Card Brand** means the network that powers credit card and debit card transactions. This includes, without limitation, Visa, Mastercard and American Express.
- **Chargeback** means a Refund, Transaction Fund Reversal or a dispute or claim by any party, including the Landlord, Tenant, or Tradesperson, , and/or their financial institution, a Card Network, OurProperty, OurProperty’s processor, the OurProperty Platform or OurProperty Platform’s financial institution in relation to a transaction that involves payment with a credit card or by ‘credit’ on a debit card.
- **Collection Services** has the meaning given to it in clause 1.

- **Fees** means, unless expressly specified to the contrary in this Agreement, the fees payable to OurProperty comprising of a proportion of the fees that You pay to the Platform.
- **Services** includes the collection and disbursement of rental and associated payments occurring via the OurProperty Platform.
- **Landlord** means the owner of a property who has appointed the Agent to manage the property on their behalf.
- **Losses** means any and all actions, claims, demands, losses, liabilities, damages, recoveries, settlements and/or costs (including attorney, accountant and expert witness fees and costs), known or unknown, contingent or otherwise.
- **Platform** means the OurProperty online Platform which facilitates the property management process, including, but not limited to, the collection and disbursement of rental and associated payments.
- **Prohibited Transactions** means the businesses, business activities or business practices that are prohibited by OurProperty, a Card Network or financial institution involved in the Transaction.
- **Rent** means all rental payments and other income paid by the Tenant to the Landlord through the Platform and has the meaning given to it in clause 5.
- **Representatives** means a person's affiliates, and each of their respective officers, directors, shareholders, employees, representatives, agents, successors and assigns.
- **Refunds** means a payment reversal in respect of rental payments and other income collected on Your behalf. For clarity, Refunds may include a Chargeback but do not include Transaction Funds Reversals.
- **Tenant** means the person who at any time is renting or occupying a property managed by the Agent.
- **Tradesperson** means professionals in various lines of work and commerce who register to the Platform in order to receive referrals for services.
- **Transaction** means any transaction relating to the collection and disbursement of rental and/or associated payments.
- **Transaction Funds Reversals** are payment reversals that can refund a party up to the full amount of the Transaction as a result of an unauthorised, unlawful, suspicious or Prohibited Transaction. For the avoidance of doubt, a Transaction Fund Reversal may include a Chargeback but does not include a Refund.

3. Your Information

You agree to provide the following information to OurProperty, so that OurProperty may verify Your Identity, so that it may provide the Collection Services:

1. Full legal name;
2. Email address;
3. Current address;
4. Month and year of birth;
5. Bank account details; and
6. Any other information which OurProperty may reasonably request.

A registered business will also need to provide the following information:

1. Full business name;
2. Business Address;
3. Business ABN or ACN;
4. Business phone;
5. Full name and contact details of the Directors of your business; and
6. Any other information which OurProperty may reasonably request.

OurProperty will collect, use, disclose and store your information in accordance with its Privacy Statement, in order to provide the Collection Services to You and verify Your Identity. You provide your consent to do so. Further information is also set out in our Privacy Statement below.

4. Privacy Statement

OurProperty is committed to complying with Our privacy law obligations.

OurProperty collects your personal information to provide the Collection Services. We usually collect Your information directly from You, however, there may be circumstances where we may also collect it from a third party such as the Platform or financial institution involved in the transaction or identity verification provider. If You don't provide us with the information, We may not be able to provide the Collection Services to You.

Your information may be disclosed to a Third Party Provider to help us verify Your identity or provide the Collection Services to You. The Third Party Providers may be located overseas and may host or access your personal information.

Some of Our data is hosted by a service provider who currently backs up data to servers located overseas, in the USA.

OurProperty ensures that all of those who have access to your personal information, or to whom your personal information is disclosed, have appropriate security systems in place to prevent misuse, loss or unauthorised disclosure of Your personal information, in accordance with Australian Privacy Laws.

Your personal information may be used for other purposes such as providing information to Tradespersons and Consumers and direct marketing.

Our full Privacy Policy is available at www.ourproperty.com.au and contains information in relation to Your Information and how to make a complaint about a breach of the Privacy Act. You agree to be bound by the terms of the Privacy Policy.

5. Payment and Account Authorisation

The Landlord instructs OurProperty to receive, on its behalf, the payment in full or in part of Rent paid by the Tenant, less any fees or charges the Landlord has agreed to pay the OurProperty Platform. (the **Rent**).

The Landlord authorises OurProperty to, in accordance with the terms of this Agreement:

- Pay into the Landlord's Account the Rent received; and
- Debit the Landlord's Account to discharge its obligations pursuant to this Agreement;
- Debit the Landlord's Account to distribute Rent in accordance with the Landlord's instructions, including for the payment of Tradespersons, if so instructed.

OurProperty may pay the Rent to the Landlord at such times agreed between the Landlord and the Agent or the Platform and by any means it considers appropriate including by direct credit, Credit or Debit Card Payment.

6. Funds Held for Your Benefit

OurProperty receives and holds Rent from the Tenant on the Landlord's behalf, in trust for the Landlord, in Our regulated Trust account.

OurProperty distributes Rent to other accounts, for example, Tradespersons, in accordance with your instructions. OurProperty will also forward rental monies to the Landlord's Account.

OurProperty holds the funds for the Landlord's benefit in Our Trust account and distributes those monies only in accordance with the Landlord's instructions.

OurProperty has sole discretion over the establishment and maintenance of its bank accounts.

7. Taxes

OurProperty will not be responsible for payment of any sales, use, personal property or other governmental tax or levy imposed in connection with any Transaction on the Platform.

8. Illegal and Prohibited Transactions

You agree You will not use the Collection Services for, or otherwise accept payments in connection with, any illegal activity or Prohibited Transactions.

9. Right to Refuse to Provide Services

OurProperty may refuse to provide Collection Services for You, if:

- You may have violated any law, rule or regulation; or
- OurProperty is requested to do so by a Court, Tribunal, Government or Regulatory Body.

10. Transaction Funds Reversals, Refunds and Disputes

You acknowledge that a Transaction Funds Reversal, Refund or dispute made by any User of the Platform may result in a return of part or all of the monies from that Transaction to that User.

If a Transaction is disputed by a User (Agent, Landlord, Tenant or Tradesperson) of the Platform, or a Transaction Funds Reversal or Refund is being sought by a User, Our Property will not be responsible or liable for that Transaction and any associated fees or fines in respect of that Transaction.

The Parties (Agent, Landlord, Tenant, Tradesperson) agree:

- To comply with any payment industry or banking rules and regulations applicable to the dispute, Transaction Funds Reversal or Refund;
- To take all reasonable action to resolve any dispute in a timely manner including a dispute involving a Transaction Funds Reversal or Refund;
- To provide, and instruct OurProperty to provide, timely assistance and reasonable information to OurProperty Platform Provider, the Card Network, OurProperty's processor or financial institution in relation to any dispute, Transaction Funds Reversal or Refund;
- That any Transaction Funds Reversal or Refund is facilitated by the banking rules and regulations. If any Transaction Funds Reversal is required by the payment industry or banking rules and regulations, , OurProperty is instructed by You, without further notice, to give effect to the reversal by holding an amount in Our trust account to cover the reversal restricting the Landlord's access to the funds in Our trust account, debiting the Transaction Funds Reversal amount and any associated fees or fines from Our trust account;
- That in the event OurProperty has disbursed the funds to the Landlord (and those funds are then reversed by the financial institution), the Landlord instructs OurProperty to redraw the amount that has been reversed by the financial institution, from the Landlord;
- That if a Refund is being sought, to provide timely instructions directly to OurProperty in relation to the Refund.

OurProperty assumes no liability for any Transaction Funds Reversal, Refund or dispute. OurProperty will be held harmless by You for acting in accordance with clauses 8 and 10 of this Agreement.

You also agree, without limiting clause 14, to indemnify OurProperty for any Transaction Funds Reversal, Refund or dispute and any associated fees or fines.

OurProperty may recover any funds from You in respect of any Refund or Transaction Funds Reversal. We may also take legal action to enforce the indemnity.

Without limiting this clause 10, You acknowledge and agree that OurProperty may delay or reject Transactions that OurProperty considers potentially fraudulent or unauthorised.

11. Termination

OurProperty reserves the right to immediately terminate this Agreement at any time for any reason without prior notice to You.

You may terminate this Agreement at any time by notifying the OurProperty Platform of the termination of Your use of the Platform in accordance with the applicable terms governing Your use of the Platform.

Upon Termination:

- Your account will be flagged as dormant and the Services will cease; and
- Any pending Transactions will be cancelled and all amounts held on Your behalf in Our bank account, including Rent to be received from Transactions completed prior to the termination, shall be paid to You.

Without limiting clause 14, You agree that OurProperty will not be liable for any damages or responsible for any compensation in connection with the termination or suspension of the Services.

12. Survival of Termination

The following clauses, and any other terms necessary to enforce the obligations in accordance with these clauses, as well as any other of Your remaining obligations shall survive the termination of this Agreement:

- **Clause 13** (Dispute Resolution);
- **Clause 14** (Liability), and
- **Clause 15** (Disclaimer).

13. Dispute Resolution

You acknowledge that the payment industry and banking rules and regulations facilitate and determine any dispute in respect of any Transaction, Refund or Transaction Funds Reversals.

OurProperty will provide any information required by the payment industry and banking rules and regulations and is bound by the decision of the payment processor.

You agree to be bound by any applicable dispute resolution process required by any payment industry or banking rules and regulations applicable to the Transaction, Refund or Transaction Funds Reversals.

14. Liability

Without limiting clause 10, OurProperty or any of its Representatives will not be liable to You for any Losses arising out of or in connection with Your use of Our Collection Services.

If the limitation of liability in clause 10 is not enforceable for any reason, then, OurProperty's maximum aggregate liability relating to any claim (or related claims) by You in connection with the Collection Services, will not exceed the aggregate amount of 100% of the Fees received in relation to the Transactions during the 12 month period preceding the date such claim(s) is/are made.

In no event shall OurProperty be liable for any lost profits, or any indirect, punitive, incidental, special, consequential, or exemplary damages arising out of, in connection with, or relating to the Collection Services.

15. Disclaimer of Warranty

The Collection Services are provided "As Is" or "As Available" and OurProperty makes no representations or warranties, express or implied, to You regarding the Collection Services, including without limitation, that the Services will meet Your requirements or that the Services or the OurProperty systems will be continuous and uninterrupted. OurProperty does not warrant in any way the legality of the Transaction, or Services.

In no event will Our Property Payments be liable for any act or omission of any third party including but not limited to You or Your financial institution, any payment system, any Third Party Provider, any provider of telecommunications services, internet access or computer equipment or software, any mail or delivery service or for any circumstances beyond Our Property's control (including but not limited to fire, flood or other natural disaster, war, riot, strike, terrorism, act of civil or military authority, equipment failure, computer virus, infiltration or hacking by a third party or failure or interruption of electrical, telecommunications or other utility services).

16. Your Representation

You agree, and hereby represent and warrant, that:

- You are at least 18 years of age Our Property may request a copy of applicable government identification to provide your identity.
- You have the authority to enter into and perform according to this Agreement.
- If You are carrying on a business, You hold all necessary licences and authorisations to do so.
- The information You provide pursuant to this Agreement is complete and correct as to the best of Your knowledge.
- You shall fulfil the obligations of the Services.
- Your use of Our Property's Collection Services as well as Your Transactions must comply with the laws and regulations applicable to You and Your business.

17. General

a. Modifications to the Agreement.

Our Property reserves the right to update or modify this Agreement at any time with or without prior notice that OurProperty considers reasonable according to the nature and extent of the changes. Notice may include notice on our website or the Platform. Any use of our Collection Services after publication of such notice shall constitute Your acceptance of the modifications.

b. Governing Law

This Agreement will be construed in accordance with, and governed by the laws of Queensland Australia, without reference to their rules regarding conflicts of law.

c. Waiver

If one party waives any term or provision of this Agreement at any time, that waiver will only be effective for the specific instance and specific purpose for which the waiver was given. If either party fails to exercise or delays exercising any of its rights or remedies under this Agreement, that party retains the right to enforce that term or provision at a later time.

d. Severability

If any Court determines that any provision of this Agreement is invalid or unenforceable, any invalidity or unenforceability will affect only that provision and will not make any other provision of this Agreement invalid or unenforceable and such provision shall be modified, amended, or limited only to the extent necessary to render it valid and enforceable.