



## ENVISIONBX - TERMS & CONDITIONS

Welcome to EnvisionBX. By registering for access to the Services and your continued use of the Services, you confirm you accept these Terms of Use and agree to be bound by them.

These Terms of Use were last updated in July 2021.

EnvisionBX may change these Terms of Use and will use reasonable endeavours to notify you of these changes. Please read clause 13 to see what your rights are if we make changes.

Please make sure to also check clauses 15 and 16 at the end of this document to see terms that may apply specifically to the territory in which you reside, if outside Australia.

### 1. Accounts

- To access the Services, you must set up an account.
  - You agree and acknowledge that:
    - all information you provide EnvisionBX will be true, accurate, current and complete; and
    - if you create an account on behalf of another person, you are authorised to register to use the Services and agree to these Terms of Use on behalf of that person (without limiting your obligations under these Terms of Use). EnvisionBX may require a statutory declaration or similar sworn declaration (as recognised in the relevant local jurisdiction) to EnvisionBX to confirm your authority.
  - You are responsible for maintaining the confidentiality of your account and password and for all activity on or through your account (including unauthorised access by third parties) and you must not sell, transfer, license or assign your account, username, or any account rights. EnvisionBX may charge a fee to reset your password.
  - You must notify EnvisionBX immediately of any unauthorised use of your account. EnvisionBX are not liable for any loss or damage arising in connection with any unauthorised use of your account.

### 2. Services

- EnvisionBX grants you a non-exclusive, non-transferable, limited licence to access and use the Services in accordance with your Subscription, including any new releases and updates of Services EnvisionBX may make available from time to time.
- EnvisionBX may upgrade or update the Services at any time in its sole discretion.
- You may add or remove modules to your Subscription at any time. If you remove an add-on module:
  - you will have read-only access to view historical records and/or transactions on the add-on module;
  - your access to the core module will not be affected by removing an add-on module unless we offer a version of the Services where this is not applicable.
- You acknowledge and agree that:
  - the speed of internet access will vary and may be affected by factors beyond EnvisionBX's control; and



- the Services do not constitute advice and you should seek legal, accounting, human resources, or other relevant independent professional advice before taking any action in reliance on the Services.
- You are solely responsible for:
  - determining whether the Services are suitable for your needs;
  - protecting Your Data and taking appropriate measures to protect Your Data from accidental, unlawful or unauthorised access, use or disclosure;
  - ensuring Your Data does not contain any content that will cause harm, loss or damage to EnvisionBX or the Services (including the operation of the Services);
  - obtaining the necessary rights or licences to Your Data, and to allow you to use Your Data with the Services;
  - complying with all applicable accounting, tax and other laws. You must check that storage of and access to Your Data will comply with all laws, including any laws requiring you to retain records.
- You must not:
  - use or access the Services in any unlawful way or for any illegal purpose;
  - use the Services in a manner that is excessive or unusual or creates an unfair burden on the provision of the Services, or similar services, to others (as judged in EnvisionBX's reasonable discretion);
  - infringe the intellectual property rights, privacy or confidentiality of any third party;
  - impersonate any third person or attempt to impersonate any person when using the Services;
  - use the Services to distribute, send or publish any e-newsletters, bulk emails, unsolicited electronic messages or other forms of "spam";
  - knowingly transmit any virus, worm or other disabling or malicious feature, or attempt to interfere with the operation of the Services;
  - use, modify or adapt the Service or any third party data in any way that is contrary to these Terms of Use;
  - on-sell, transfer, rent, lease or assign any copy of the Service to any third-party;
  - violate or attempt to violate any aspect of the security of the Services; or
  - modify, reverse engineer, disassemble, decompile, copy, or cause damage, disruption, unintended effect to, or interfere with, any portion of the features available through, or software in connection with EnvisionBX's provision of the Services.

### 3. Support

- EnvisionBX may update and carry out scheduled maintenance of the Services, so EnvisionBX may have to suspend access to, or functionality on, the Services from time to time. EnvisionBX will notify you of any scheduled maintenance that may interrupt the Services.



- EnvisionBX will provide you with support in accordance with its technical support policy available on the Website for which additional fees may be charged. If you encounter any errors with the Services, you must contact EnvisionBX by phone or using the support section on the Website.
- If you initiate a support request, you grant EnvisionBX direct access to your account to provide you with such support.
- You acknowledge EnvisionBX may charge you for fault resolution services at EnvisionBX's then current rates if EnvisionBX responds to a request from you that is not covered by the technical support policy.

#### 4. Fees & Payment

- In consideration of EnvisionBX's provision of the Services, you agree to pay EnvisionBX the fees as set out on the Website for the Subscription you have selected, plus any applicable taxes (**Fees**). EnvisionBX may change the Fees payable on notice to you.
- Your Subscription will automatically renew, unless you give EnvisionBX notice prior to the end of the current term. We will email you prior to any renewal to remind you that the Subscription will renew unless you notify us to expire these Terms of Use.
- Where modules are added or removed in accordance with clause 2, any variation to the Fees will be reflected from the next billing cycle.
- For the avoidance of doubt, if you make multiple additions and/or removal of modules within a billing cycle (**Current Cycle**), the Fees that apply for the next billing cycle will be determined by the status of the modules selected at the end of the Current Cycle.
- EnvisionBX will invoice you in advance for the provision of the Service. You will not be entitled to a refund of any Fees you have paid in advance, except where you terminate these Terms of Use for our breach.
- You must nominate to have the Fees debited from your nominated credit card and you authorise EnvisionBX to charge the Fees to your nominated credit card each month.
- If you fail to pay an invoice by the due date (as a result of a dishonoured payment on your nominated credit or debit card, bank account or otherwise), EnvisionBX may charge interest on overdue amounts at the rate of 1.5% per month, or the maximum amount permitted by law (whichever is greater) with interest accruing daily, and/or suspend your account and access to the Services until all overdue amounts are paid.

#### 5. Third Party Products

- The Services may contain features that interface with Third Party Products (such as, for example, products provided by Xero and BambooHR). If Third Party Products form part of your Subscription or Services, the following will apply:
  - your use of, and access to, any Third Party Products is subject to separate terms and conditions issued by the third party supplier of those products from time to time;
  - if requested, EnvisionBX will liaise with the third party supplier of the Third Party Products on your behalf;
  - EnvisionBX makes no representations or warranties in relation to any Third Party Products;
  - EnvisionBX may suspend your use of, or access to the Third Party Products if you breach the terms and conditions applicable to the Third Party Products or if



EnvisionBX no longer uses such Third Party Products.

- You acknowledge and agree that EnvisionBX will make Your Data available to the providers of the Third Party Products where it is reasonably required for performing EnvisionBX's obligations under these Terms of Use.

## 6. Intellectual Property Rights

- Nothing in these Terms of Use transfers ownership of any Pre-Existing Materials or Services. EnvisionBX reserves all rights in and to the Pre-Existing Materials and Services not expressly granted to you under these Terms of Use.
- You grant EnvisionBX a non-exclusive licence to use Your Data for the purpose of performing EnvisionBX's obligations under these Terms of Use.
- You consent to EnvisionBX naming you as a client and reproducing your business name and logos for marketing and publicity purposes.

## 7. Confidentiality & Privacy

- Each party must comply with applicable privacy law in connection with the collection, use, handling, disclosure, quality, security of and access to personal information that the party holds. EnvisionBX's applicable Privacy Policies are at:
  - For Australia: <https://www.envisionBX.com/au/policies/privacy/>
  - For New Zealand: <https://www.envisionBX.com/nz/policies/privacy/>
  - For the UK: <https://www.envisionBX.com/uk/policies/privacy/>

and you will be taken to have accepted that Privacy Policy by accepting these Terms of Use.

- Both parties must keep all Confidential Information confidential and use such information for the sole purpose of performing the obligations under these Terms of Use.
- Neither party may use or disclose the Confidential Information except:
  - to that party's employees or advisers on a need-to-know basis and that party must ensure that such persons understand and comply with the obligations imposed by this clause 7;
  - as required by law, subject to that party notifying the other party immediately if that party becomes aware that such disclosure may be required; or
  - with the other party's prior written consent.

## 1. Liability

- Subject to the provisions of this clause 8 and to the fullest extent permitted by law:
  - the Services are provided "as-is" without warranty of any kind or representations regarding the use, performance or results of the use, of the Services;
  - in no event shall EnvisionBX be liable, whether such liability is based on breach of contract, tort (including negligence), statute or otherwise:
    - for any Third Party Products;



- for any Consequential Loss, indirect, incidental, punitive or special losses of any kind, nor for any loss of data, profit, business interruption or a security breach); and
- any loss arising from activity on your account, including additional usage fees, loss of data or downtime caused by deliberate, inadvertent or unauthorised access by any party, or files that you upload, transmit, install or otherwise use in connection with the Services; and
- EnvisionBX's total aggregate liability in connection with all claims arising in relation to these Terms of Use whether in contract, tort (including negligence), statute or otherwise will not exceed an amount equal to the Fees paid by you to EnvisionBX in the preceding 12 months prior to the date the claim is made;
- To the fullest extent permitted by law, where a mandatory term or statutory right cannot be waived, EnvisionBX's liability is limited, at EnvisionBX's option, to:
  - if the breach relates to goods:
    1. the replacement of the goods or the supply of equivalent goods;
    2. the repair of the goods;
    3. the payment of the cost of replacing the goods; or
    4. the payment of the cost of having the goods repaired; or
  - if the breach relates to services:
    1. the supplying of the services again; or
    2. the payment of the cost of having the services supplied again.

## 2. Security & Data

- EnvisionBX will use reasonable precautions to prevent unauthorised disclosure of Your Data, but EnvisionBX shall not be responsible for any breach of its systems by any unauthorised third party unless such breach arises as a result of EnvisionBX's gross negligence.
- From time to time, you may be able to upload certain files as part of Your Data through the Services. The upload of these files is subject to certain restrictions, including without limitation file type and file size. You agree to comply with these restrictions as notified to you from time to time.
- EnvisionBX does not represent or warrant that the Services are entirely secure, uninterrupted or error-free. You acknowledge that the public internet is an inherently insecure environment and that EnvisionBX has no control over the privacy of any communications or the security of any data outside of EnvisionBX's internal systems.

## 3. Suspension & Termination

- You may terminate the Services at any time by electronic notice via the Website.
- EnvisionBX may terminate these Terms of Use on notice to you if you:
  - fail to remedy a breach within 7 days' notice from EnvisionBX requesting the breach be remedied;
  - breach these Terms of Use and that breach is not capable of remedy; or



- becomes insolvent or enter into liquidation to the extent permitted by law.
- terminate your subscription for another EnvisionBX product or service where these Services were offered to you for free under such subscription offer.
- Upon the expiry or termination of these Terms of Use for any reason:
  - you must pay all outstanding Fees to EnvisionBX;
  - you must pay any reasonable costs incurred by EnvisionBX as a result of the termination (including third party cancellation fees and administrative costs), except where you have terminated for our breach;
  - on EnvisionBX's request you must securely destroy EnvisionBX's Confidential Information; and
  - EnvisionBX will allow you access to a non-editable copy of Your Data for 12 months from the date of expiry or termination (as applicable).

#### 4. Force Majeure Event

- If a Force Majeure Event occurs, the affected party must notify the other party and the obligations of the party will be suspended to the extent that they are affected by the relevant Force Majeure Event until that Force Majeure Event has ceased.
- If a Force Majeure Event continues for more than 60 days, either party may terminate these Terms of Use.

#### 5. Notices

- All notices and consents relating to these Terms of Use must be in writing. A notice is deemed to have been received:
  - if posted by EnvisionBX on the Website, within 6 hours of the time of the post; or
  - if sent by email or by electronic message sent via the Services, when the sender receives an automated message confirming delivery or within 24 hours of that message being sent (as recorded on the device from which the sender sent the message).
    - If EnvisionBX needs to provide you with notice, consent or other communication under these Terms of Use, EnvisionBX will do so by sending a message to you via your account, sending an email and/or text message to the email address and/or mobile phone number specified on your account, posting a notice on EnvisionBX's Website or through push notifications.
    - If you want to contact EnvisionBX you may do so by sending a message to EnvisionBX via the Website or emailing EnvisionBX at [info@envisionBX.com](mailto:info@envisionBX.com). For adding or removing modules please execute this in the Services.

#### 6. General Terms

- EnvisionBX reserves the right at any time (whether in this version or in a new version) to change or remove features of the Services provided that, where there is any material alteration to the functionality of the Services in accordance with this clause, EnvisionBX will provide you with 30 days' notice.
- Nothing in these Terms of Use will be taken as giving rise to a relationship of employment, agency, partnership or joint venture.



- EnvisionBX may sub-contract the performance of any part of the Services to any third party or assign these Terms of Use or any of EnvisionBX's rights or obligations under these Terms of Use.
- These Terms of Use contains the entire understanding between the parties concerning the subject matter of the agreement and supersedes all prior communications.
- The failure of either party to enforce any provisions under these Terms of Use will not waive the right of such party thereafter to enforce any such provisions.
- If any term or provision of these Terms of Use is held by a court to be illegal, invalid or unenforceable under the applicable law, that term or provision will be severed from these Terms of Use and the remaining terms and conditions will be unaffected.
- These Terms of Use is governed by, and construed in accordance with the laws of Western Australia, Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts of Western Australia. These Terms of Use shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.
- EnvisionBX may change these Terms of Use and will use reasonable endeavours to notify you, including by posting the changes on the website. If the changes to the Terms of Use have a material adverse impact on you, you must notify us within 30 days of receiving notice of the change. If we consider that the change does have a material adverse impact on you, (determined in our sole discretion) we may allow you to continue to operate under the Terms of Use in effect immediately prior to the change. If we do not offer you this option, you may terminate on notice to us.
- You may not assign, transfer or otherwise deal with these Terms of Use or any right under these Terms of Use without our prior written consent, which must not be unreasonably withheld. We may assign, transfer or otherwise deal with these Terms of Use or any right under these Terms of Use where it is reasonable to do so, including for example where our business is acquired by someone.
- Any warranty, indemnity, or obligation of confidentiality in these Terms of Use will survive termination. Any other term which by its nature is intended to survive termination of these Terms of Use survives termination of these Terms of Use.

## 7. Definitions & Interpretation

- In these Terms of Use:
- **Confidential Information** means confidential, proprietary and commercially-sensitive information (irrespective of the form or the manner in which the information is disclosed, or the time of such disclosure) including information which:
  - is identified as confidential or ought to have been known to be confidential; and
  - relates to the business affairs and practices, including financial information, business opportunities, business plans, business processes and methodologies,

but does not include information which is in, or comes into, the public domain other than by a breach of these Terms of Use, or which is independently known to the other party as evidenced by its written record.

- **Consequential Loss** means any loss that does not arise naturally in the ordinary course of things from the event or circumstance giving rise to the loss.
- **EnvisionBX** means:





- in Australia and New Zealand, Envision Digital Pty Ltd ACN 607 831 023; and
- in the United Kingdom, Envision D Limited Company Number 13505490.
- **Force Majeure Event** means any act, event or cause including earthquakes, cyclones, floods, fires, lightening, storms or other acts of God, strikes or industrial disputes, riots, terrorist acts, civil disturbances, breakages of machinery or industrial conditions or arising out of any other unexpected and exceptional cause, delays in transportation and dispositions or orders of governmental authority, which:
  - directly or indirectly results in a party being prevented from or delayed in performing any of its obligations under these Terms of Use; and
  - is beyond the reasonable control of that party.
- **Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, confidential information, trade secrets, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registered, registrable or patentable.
- **Pre-Existing Materials** mean any of materials existing at the date of these Terms of Use, including all trademarks, designs, design specifications, software, hardware or other documentation and materials used in EnvisionBX's business or operations, including software, source code, scripts, materials, reports, diagrams, code, processes, methods, specifications and other works.
- **Services** means the online integration software available on the Website.
- **Subscription** means the subscription type selected by you on the Website.
- **Third Party Products** means any third party products and/or services (such as, for example, products and/or services provided by Xero and BambooHR), including data feeds from third party product providers.
- **Your Data** means the data, content, software, documents, files, information and materials you store, develop, host or publish on EnvisionBX's infrastructure using the Services.
- **Website** means EnvisionBX's websites, including:
  - [www.envisionBX.com.au](http://www.envisionBX.com.au)
- In these Terms of Use:
  - a reference to a person includes a natural person, corporation, unincorporated association or partnership;
  - a reference to a party to these Terms of Use includes its executors, administrators, substitutes, successors and permitted assigns;
  - the headings in these Terms of Use are for convenience only and have no legal effect;
  - the singular includes the plural and vice versa;
  - other grammatical forms of a defined word or expression have a corresponding meaning;
  - "including" and similar words do not imply any limitation;





- a reference to any agreement or document is a reference to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time; and
- a reference to a statute includes a reference to that statute as amended or replaced from time to time

## 1. Territorial Clauses – United Kingdom

- If you are purchasing the Services in the United Kingdom and or are subject to the jurisdiction of England and/or English law, the following terms and conditions supplement these Terms of Use and also apply to you:
- By accepting these Terms of Use you warrant that you are not a 'Consumer' (as defined by the Consumer Rights Act 2015) and that you will use the Services only for commercial and/or business purposes. You acknowledge that the Services are not provided for private or domestic use and warrant that you will make no such use of them.
- For the purposes of clause 4 you acknowledge and accept that you shall be responsible for the payment of all VAT (and/or similar sales or transaction taxes) that may be chargeable on the Fees.
- Your Data may contain data which is classified as be 'personal data' in the United Kingdom (as defined by Directive 95/466/EC or by Regulation 2016/679, the 'GDPR'). Where that is the case both parties agree and acknowledge that you are and shall remain the 'data controller' and that EnvisionBX shall be the 'data processor'.
- You warrant that you have all necessary consents and permissions to send Your Data to EnvisionBX for the purposes contemplated by these Terms of Use.
- EnvisionBX will only process personal data that you provide to it in order to deliver the Services as contemplated by these Terms of Use, or as you may specifically instruct it from time to time.
- Your Data may be stored in facilities which are located outside of the European Economic Area, by using the Service you are agreeing that Your Data may be sent to such facilities and that you have obtained from all data subjects whose personal data you may send to EnvisionBX all necessary consents and permissions to permit it to store such data in this way.
- EnvisionBX will not transfer Your Data to third parties without first receiving your specific instructions to do so. If EnvisionBX is for any reason legally obliged to transfer any personal data inherent in Your Data to a third party it shall promptly notify you to the extent that it is legally permitted to do so.
- In the event that any data subject chooses to exercise any statutory right in relation to any personal data contained within Your Data, EnvisionBX shall grant all reasonably requested assistance to you in order to assist you in complying with your statutory obligations.
- You undertake to indemnify and hold harmless EnvisionBX against all costs, claims, damages or expenses incurred by it which may be caused by any failure by you to comply with any obligation set out in this clause 15. You further agree that EnvisionBX is reliant upon you for direction as to the extent to which it is entitled to use and process Your Data; accordingly EnvisionBX shall not be liable for any claim brought by any data subject which arises from any action or omission to the extent that such action or omission resulted directly from your instructions.

## 2. Territorial Clauses – New Zealand

- If you are purchasing the Services in New Zealand and or are subject to the jurisdiction



of New Zealand and/or New Zealand law, the following terms and conditions supplement these Terms of Use and also apply to you:

- These Terms of Use are subject to the consumer guarantees regime as set out in the Consumer Guarantees Act 1993 (NZ), as amended from time to time. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. These guarantees cannot be modified nor excluded by any contract, except in those circumstances contemplated by section 43(2) of the New Zealand Consumer Guarantees Act.