

# OpenForms: Terms of Use

Thanks for using OpenForms to replace PDFs and other old form technologies with our beautiful, responsive, accessibility compliant web based forms for websites and intranets.

Your use of OpenForms is subject to the terms and conditions contained in this document as well as the Granicus Privacy Policy and OpenForms Acceptable Use Policy (collectively, the "Terms"). These Terms may be updated from time to time and are available at <https://www.granicus.com/Legal/licensing>. By creating an account in OpenForms you accept the Terms. These Terms come into effect immediately after the successful creation of your subscription.

If you are an individual and you are accepting these Terms on behalf of an organisation, you represent that you are authorized to do so on behalf of that organisation. In such case, "you" and "your" will refer to that organisation, otherwise it refers to you as an individual and you enter into the Terms yourself.

## 1. Pricing and Payments

1.1. OpenForms Pricing. Granicus may from time to time adjust the prices and introduce additional modules. If your subscription is an enterprise agreement, your pricing will be included as an appendix to this agreement. If your subscription is affected by a change in pricing, you will be notified at least three (3) months prior to the change taking effect.

1.2. Invoices and Payment Terms. Granicus will make available detailed invoices to you in respect of any applicable fees on a monthly or annual basis depending on your chosen plan. You agree to pay the amount specified in each invoice upon receipt. Accounts thirty (30) days past due are subject to suspension or cancellation. Fees paid by you are non-refundable, except as provided in these Terms or when required by law.

1.3. Payment Method. Granicus accepts payments (each, a Payment Method) via a valid credit card such as Visa, MasterCard or American Express for all subscriptions. Enterprise subscriptions may be paid via direct bank deposit or wire transfer as per instructions on Enterprise invoices. The Payment Method you first specify when you set up your subscription will be set as the Payment Method for your subscription. You may change the Payment Method using the management tools available within OpenForms. If the Payment Method is credit or debit card, you agree that the submission of credit or debit card information to OpenForms will constitute your

authorisation for Granicus to charge all applicable fees and charges to the specified credit or debit card.

1.4. Taxes. You will pay any sales, value-added or other similar taxes imposed by applicable law that Granicus must pay associated with the sale of OpenForms, except for taxes based on Granicus income.

## 2. Privacy

2.1. Privacy. The parties will, in performing their respective obligations under these Terms, comply with Australia's Privacy Act 1988 (Cth) (the Act), and neither party will put the other in breach of the Act. In the course of using OpenForms, you may submit content to OpenForms (including your personal information and the personal information of others) or third parties may submit content to you through OpenForms (your Content). Where you submit personal information of third parties to OpenForms, you must: (a) ensure that you are entitled to transfer the relevant personal information to Granicus so that Granicus may lawfully use, process and transfer the personal information in accordance with Granicus Privacy Policy; and (b) ensure that the relevant third party has been informed of, and has given their consent to, such use, processing and transfer of the personal information as required by all applicable privacy laws.

2.2. Privacy Policy. Granicus Privacy Policy details the manner in which we treat your Content and personal information and describes the key features of how we protect your personal information. We agree to adhere to the Privacy Policy located at <https://www.granicus.com.au/Privacy-Policy>. You agree that Granicus may use and share your Content in accordance with our Privacy Policy.

2.3. Confidentiality. Granicus will treat your Content as confidential information and only use and disclose it in accordance with these Terms (including our Privacy Policy). Your Content is not considered to be confidential information if such Content: (a) is publicly available through no fault of Granicus; or (b) was rightfully received by Granicus from a third party without restriction and without breach of an obligation of confidentiality. Granicus may disclose your Content when required by law.

2.4. Security. Granicus aims to comply with established industry practice in relation to your Content security. We utilise Microsoft Azure cloud services which have been independently tested to comply with numerous governmental certifications globally, including IRAP in Australia and COS 1, 2 & 3 in the USA. OpenForms is also independently undergoing IRAP, ISO27001 and PCI DSS compliance certification processes.

## 3. Your Content

3.1. You Retain Ownership of Your Content. You retain all right, title and interest (including any intellectual property rights) in and to your Content. Granicus does not claim ownership over any of your Content.

3.2. Limited License to Your Content. You grant Granicus a limited, non-exclusive, royaltyfree, non-transferable license to host, reproduce, transmit, cache, store, exhibit, publish, display, distribute, perform, and otherwise use your Content solely as necessary to provide OpenForms to you and as otherwise permitted by Granicus Privacy Policy. You represent and warrant that you have the rights necessary to grant Granicus such a licence.

3.3. Responsibility for your Content. You are solely responsible for your Content which includes content submitted to you through OpenForms by third parties. You must ensure that you have obtained all necessary rights, releases and consents to allow your Content to be collected, used and disclosed in the manner contemplated by these Terms and to grant Granicus the rights herein. You will be solely responsible for the accuracy and appropriateness of your Content within OpenForms.

3.4. Content Review. You acknowledge that, Granicus may, but has no obligation to, monitor, and review or edit your Content. In all cases, Granicus reserves the right to remove or disable access to any of your Content that, in Granicus sole discretion, violates the law or these Terms. Granicus may take these actions without prior notification to you.

3.5. Content Disclosure. Granicus reserves the right to disclose any of your Content that Granicus deems necessary to comply with any applicable law, legal process or government request including, without limitation, account information (ie name, e-mail address etc), and your Content residing on OpenForms. Prior to disclosure, Granicus will inform you of the information to be disclosed.

3.6. Third Party Resources and Links to other websites. Links to other websites maintained by third parties may be provided in OpenForms for the convenience of users. The inclusion of a link does not imply endorsement of the content of the external site by Granicus. Granicus is not responsible for and accepts no liability for the content or services provided by any third party websites, or whether the information contained on those websites is suitable for your needs.

3.7. URL – OpenForms URL or your own URL. OpenForms allows you to integrate forms into your own website by embedding the form via an iFrame or via hyperlink. Where you embed forms on your own website, you are not permitted to move, alter, remove, or hide the notice "Powered by Granicus" or the link to our Privacy Policy that may appear below the form.

## 4. OpenForms IP

4.1. OpenForms IP. You acknowledge that Granicus is the sole and exclusive owner of all intellectual property rights in OpenForms, and you undertake that you will attempt to decompile, disassemble, reverse engineer, modify, enhance, change or alter the whole or any part of OpenForms. Neither these Terms nor your use of OpenForms grants you ownership in OpenForms or the content you access through OpenForms (other than your Content). These Terms do not grant you any right to use Granicus trademarks, business names or logos.

## 5. Account Management

5.1. Keep Your Password Secure. You must be aged 18 or over to be eligible to register with OpenForms. You are liable for all activity on your account, including purchases made using your account details. You agree you will not disclose your password to any third party and that you will take sole responsibility for any activities or actions undertaken using your account, whether or not you have authorised such activities or actions. You will immediately notify Granicus of any unauthorised use of your account.

5.2. Keep Your Details Accurate. You warrant that all registration information you provide when opening the account is complete, true and accurate in all respects and that you will maintain and promptly update such information and material to keep it true, accurate, current and complete. Where applicable, you must keep your contact details and payment details associated with your account current and accurate.

5.3. Remember to Backup. You acknowledge that you are responsible for maintaining, protecting, and making backups of your own Content. While OpenForms regularly backs up all data to geographically remote data centres for disaster recovery purposes and follows industry best practices in managing the data and access to it, to the extent permitted by applicable law, Granicus will not be liable for any failure to store, or for loss or corruption of your Content.

## 6. Maintenance

6.1. Maintenance. Granicus may perform scheduled maintenance of our software and infrastructure from time to time. Granicus will attempt to carry out scheduled maintenance at times which will least affect you and in a manner which will minimise service interruption. Scheduled maintenance may mean that access to forms on your website and or the OpenForms management interface will be temporarily unavailable, however most maintenance and deployment activities will not cause any down time.

## 7. Your Obligations and Things You Must Not Do

7.1. Third party services. You acknowledge that Granicus will not have any responsibility or liability with regard to any third party services used by you on or through OpenForms

and any use of such third party services will be at your own risk. While Granicus will use reasonable endeavours to maintain compatibility between third party services and OpenForms, Granicus is not responsible for any incompatibility between third party services and OpenForms.

7.2. Unauthorised access to OpenForms. To the extent permitted by applicable law, You indemnify and keep Granicus indemnified against any loss or damage (except where and to the extent that such loss or damage is consequential in nature) which Granicus suffers as a result of any unauthorised access to OpenForms or OpenForms network or those of OpenForms suppliers, to the extent such unauthorised use arises from a breach of these Terms.

7.3. Acceptable Use Policy. You will use OpenForms in compliance with our then current Acceptable Use Policy located at <https://www.granicus.com/Legal/licensing>. Any breach of this Acceptable Use Policy by you will entitle Granicus to suspend or cancel your account without prior notice to you.

## 8. Suspension and Cancellation of OpenForms

8.1. Suspension or Cancellation. You agree that Granicus may cancel your OpenForms account or suspend access to your account at any time. Granicus will notify you of such cancellation or suspension of your account by email to the email address you provide when you register with OpenForms. You may discontinue your use of OpenForms or cancel your OpenForms account at any time.

8.2. Effects of Cancellation and Suspension. Upon cancellation of your account: (a) all access to OpenForms will cease immediately as your account will be disabled; (b) you will be invoiced for any outstanding fees which must be paid within 30 days from the date of cancellation. Where your Payment Method is credit or debit card we may automatically attempt to collect any outstanding fees from your specified credit or debit card; and (c) you will be able to access your Content on OpenForms for 30 days following cancellation to allow you to export your Content. All of your Content in OpenForms will no longer be available 31 days following cancellation of your account as OpenForms will purge all of your Content from OpenForms and all of your Content will be destroyed, unless otherwise agreed by the parties in writing.

## 9. Warranty

9.1. Warranty. You represent, warrant and covenant to Granicus that: (a) your Content or its use will not violate, misappropriate or infringe any intellectual property rights or any other persona, privacy or moral right arising under the laws of any jurisdiction of any person or entity, nor will same constitute a libel or defamation of any person or entity; (b) your Content will not contain any harmful components, including, but not limited to, viruses, hidden sequences, hot keys or time bombs; and (c) you will comply with all

applicable laws, rules and regulations (including, but not limited to, export control, decency, privacy and intellectual property laws in your use of OpenForms).

9.2. Disclaimer of Warranties. Where you use OpenForms you understand and expressly agree that use of OpenForms is at your sole risk. OpenForms is provided on an “as is” and “as available” basis. Granicus expressly disclaims all warranties of any kind, whether express or implied, with respect to OpenForms (including, but not limited to, the implied warranties of merchantability, fitness for a particular use or purpose, and non-infringement). Granicus makes no warranty that OpenForms will meet your requirements, or that OpenForms will be uninterrupted, timely, secure, or error free. You understand and agree that any material and/or information downloaded or otherwise obtained through the use of OpenForms is done at your own discretion and risk and that you will be solely responsible for any damage arising therefrom. No advice or information, whether oral or written, obtained by you from OpenForms or through OpenForms will create any warranty not expressly made herein.

## 10. Indemnification

10.1. Granicus will defend, indemnify and hold Client harmless from and against all losses, liabilities, damages and expenses including reasonable attorney fees (collectively, “Losses”) arising from any claim or suit by an unaffiliated third party that OpenForms, as delivered to You and when used in accordance with the Terms, infringes a valid copyright or patent issued in the jurisdiction in which you are licensed to use OpenForms (a “Claim”).

b) To the extent permitted by applicable law, Granicus will have control of the defense and reserves the right to settle any Claim. You must notify Granicus promptly of any Claim and provide reasonable cooperation to Granicus, upon Granicus' request and at Granicus' cost, to defend such Claim. Granicus will not agree to any settlement which requires acknowledgment of fault or an incurred liability on the part of an indemnified party not otherwise covered by this indemnification without indemnified party's prior consent. You may elect to participate in the defense of any Claim with counsel of your choosing at your own expense.

c) If OpenForms are subject to a claim of infringement or misappropriation, or if Granicus reasonably believes OpenForms may be subject to such a Claim, Granicus reserves the right, in its sole discretion, to: (i) replace OpenForms with non-infringing functional equivalents; (ii) modify OpenForms to render it non-infringing; or (iii) terminate your license to OpenForms and refund any prepaid fees for the then-remaining portion of the Term.

d) Granicus will have no obligation to indemnify, defend, or hold You harmless from any Claim to the extent it is based upon: (i) a modification to OpenForms by anyone other



than Granicus; (ii) combination of OpenForms with non-Granicus software or data; or (iii) Your use of OpenForms other than in accordance with the Terms.

e) This section sets forth Your sole and exclusive remedy, and Granicus' entire liability, for any Claim that OpenForms violates or infringes upon the rights of any third party.

## 11. Limitation of Liability

11.1. Exclusion of liability. Subject to clause 11.3 and to the full extent permitted by law, Granicus or its affiliates, will not be liable to you, or your affiliates, (whether in common law, equity, contract, tort (including negligence), breach of statutory obligation or duty, for repudiation, anticipatory breach or otherwise) for: (a) any special, exemplary or punitive damages; or (b) any consequential loss, regardless whether such party has been made aware of the likelihood of such losses.

11.2. Limit of liability. Subject to clause 11.3, to the extent permitted by law, Granicus, or its affiliates, cumulative liability to you (or your affiliates), for all claims arising under or in relation to these Terms, whether in common law, equity, contract, tort (including negligence), breach of statutory obligation or duty, repudiation, anticipatory breach or otherwise), will not exceed when aggregated, the actual fees received by Granicus under these Terms for the portion of the services provided to you, giving rise to such claim during the preceding twelve (12) month period.

11.3. Acknowledgment of Granicus' liability. Notwithstanding that clauses 11.1 and 11.2 are expressed in the Agreement to apply to exclude and limit liability, nothing in this clause 11 operates to exclude or restrict Granicus' liability under the indemnity contained in clause 10.1.

11.4. Exclusion of implied terms and limitation. Nothing in this Agreement will operate so as to exclude, restrict or modify the application of any of the provisions of the Competition and Consumer Act 2010 (Cth) or any equivalent State or Territory legislation (Relevant Legislation), the exercise of a right conferred by such a provision, or any liability of a party for a breach of a condition or warranty implied by such a provision, where the Relevant Legislation would render it void to do so. To the extent that it is able to do so, Granicus expressly limits its liability for breach of any condition or warranty implied by virtue of any Relevant Legislation to at Granicus' option, resupply of the services or refund the cost of this service.

## 12. Changes and Updates

Changes to OpenForms. Granicus reserves the right to add, alter, or remove functionality from OpenForms at any time without prior notice to you. OpenForms may also limit, suspend or discontinue OpenForms at its discretion. If Granicus discontinues

OpenForms, we will give you at least 180 days advance notice to provide you with an opportunity to export a copy of your Content from OpenForms.

## 13. General Terms

13.1. Force Majeure. Granicus is not responsible or liable to you or any other person, firm or entity for any failure to perform any obligation under these Terms to the extent that it is caused by any act, event, omission or non-event beyond Granicus' reasonable control, which will be deemed to include riots, war, acts of terrorism, fire, flood, storm or earthquake.

13.2. Entire Agreement. These Terms are the entire agreement and understanding with regard to OpenForms and supersede any prior agreement or understanding on anything connected with OpenForms. You have entered into these Terms without relying on any representation by us or any person purporting to represent us.

13.3. Representations. You acknowledge that you have relied on your own independent assessment and judgment in determining whether OpenForms meets your (or your customers) requirements.

13.4. Assignment. You may not assign any of your rights or obligations under this agreement without the prior written consent of OpenForms, which must not be unreasonably withheld.

13.5. Waiver and invalidity. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

13.6. Severability. If any provision of these Terms is held to be invalid or unenforceable, such provision will be severed without affecting the enforceability and validity of the remaining provisions which will remain in full force and effect.

13.7. Relationship of the parties. You agree that Granicus is not your employee, agent, partner, joint venturer or subcontractor in relation to your use of OpenForms.

13.8. Governing Law. This agreement is governed by the law in force in Victoria, Australia. The parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria, Australia and courts which may hear appeals from those courts in respect of any proceedings in connection with these Terms.



## 14. Contracting entity

14.1. Contracting Entity. References to "OpenForms", "Granicus" "we", "us" are references to Granicus Australia Pty Ltd, ABN: 60 648 475 101.