

## **BILLBE: TIME RECORDING TERMS AND CONDITIONS OF USE**

Welcome to the Terms and Conditions of Use of the time-recording feature of the Billbe service.

### **Billbe:**

- Uses an online time management and invoicing system utilising software developed by Billbe Australia Pty Ltd ("**Billbe Australia**"); and
- obtains the finance to pay your invoices and the account manager to liaise with your client from Omniveta Australia Pty Ltd ("**Omniveta**") (together, the **Service**).

These Terms and Conditions of Use concern the use of the software developed by Billbe Australia. They record our obligations as a service provider and your obligations as a registered customer. Because they affect your legal rights, you should read them carefully. Since this Service has been specifically designed for barristers, "Your" or "You" is a reference to the barrister subscribing for the services offered by Billbe.

By clicking the "I accept" dialogue box next to these Terms and Conditions of Use you commit to a binding contract wherein Billbe Australia licences the time management and invoice functions of the Service to you for no charge. Billbe Australia is the Licensor of the software technology that displays these functions on the Billbe Software Service ("**Software**"). The Software includes any updates, fixes or supplements that Billbe Australia provides to you after you obtain initial access to the Software. This Software is protected by intellectual property laws and treaties.

In order to use the Service, you must be (1) 18 years or older; (2) have the power to enter into a binding contract in your own right and not be barred from doing so under the laws of Australia; and (3) be resident in Australia.

These Terms and Conditions of Use were last updated on 29 February 2016.

## **DEFINITIONS**

<b>Agreement</b>	Means these Terms and Conditions of Use.
<b>Billbe Australia's Computing System</b>	Means the collection of hardware, software, application specific computing systems, networks, third-party connectivity and tools, and other connectivity hardware and tools, in whole, or in part, which allow the creation and continued running of the Service
<b>Confidential Information</b>	Includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Service but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party.
<b>Costs Agreement</b>	Means a costs agreement between You and a solicitor or direct access client.

<b>Costs Legislation</b>	Means the <i>Legal Profession Act 2004</i> (NSW) (and associated subordinate legislation) or the <i>Legal Profession Uniform Law 2015</i> (NSW) (and associated subordinate legislation).
<b>Data</b>	Means any data entered by You or with Your authority into the Website.
<b>Intellectual Property Right</b>	Means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.
<b>Service</b>	Means the online time management, invoicing, accounting and personal finance management services made available (as may be changed or updated from time to time by Billbe) via the Website.
<b>Software</b>	Means the original series of modular computer programs which provide for an internet connect, delivered by mobile phone, tablet or PC/Macintosh computers to store the details of a Barristers working day/s by means of a calendar function, an invoicing function, a note taking function and a client management function. The computer programs interact with each other to produce a complete, working system and to allow the Barrister to upload and authorise the collection of the client invoices by means of a securely interaction with the Omniveta payment system.
<b>Billbe Website</b>	Means billbe.com.au, wholly owned by Billbe Australia Pty Ltd, a privately owned company, registered in Australia and all current and future global subsidiaries of Billbe Australia Corporation Pty Ltd.
<b>Invited User</b>	Means any person or entity, other than the Subscriber, that uses the Service with the authorisation of a specific Subscriber from time to time.
<b>Subscriber</b>	Means the person who registers to use the Service either as, or on behalf of, a barrister holding a current practicing certificate in the state of New South Wales.
<b>You</b>	Means the Subscriber, and where the context permits, an Invited User.
<b>Your</b>	Has a meaning corresponding to “You”.
<b>Website</b>	Means the Internet site at the domain <a href="http://www.billbe.com.au">www.billbe.com.au</a> or any other site operated by Billbe Australia.

## 1. LICENCE TO USE SOFTWARE

These Terms and Conditions grant You the following rights:

- a. Once You have registered, You may access and use the Software for free, subject to these Terms and Conditions. Please note however that the Software will not allow You to be paid by Omniveta unless and until You have accepted the Services Contract, and assigned the benefit of a Costs Agreement to Omniveta, in respect of a specific invoice.
- b. Billbe Australia grants You the right to access and use the Software. This right is non-exclusive, non-transferable, non-assignable, non-sublicensable and limited by and subject to this Agreement. You acknowledge and agree that, subject to any applicable written agreement between You as the Subscriber and an Invited User, or any other applicable laws:
  - I. the Subscriber determines who is an Invited User is; and
  - II. the Subscriber is responsible for all Invited Users' use of the Service.

## 2. YOUR OBLIGATIONS

- a. **General obligations:** You must only use the Billbe software, the Service and the Website for Your own lawful internal business purposes, in accordance with this Agreement and any notice sent by Billbe or posted directly on the Billbe Website. You may use the Service and Website Yourself, or allow only Invited User/s to access the Service, but if You do so You must ensure that all persons for whom or to whom the Service is provided comply with and accept all terms of this Agreement that apply to You.
- b. **Access conditions:** You must ensure that all logons and passwords required to access the Service are kept secure and confidential. In the event that you suspect that one or more logons and passwords have been compromised, by whatever means, You must immediately notify Billbe Australia of any unauthorised use of Your logon and/or password or any other breach of security and Billbe Australia will reset Your password. In addition, You must take all other actions and comply with all directions that Billbe Australia deems reasonably necessary to maintain the security of Billbe Australia's Computing System, and Your access to the Services. You will inform Billbe Australia of any breach, or attempted breach of security at the first opportunity.

As a condition of this Agreement, when accessing and using the Services, You must:

- I. not attempt to undermine the security or integrity of Billbe Australia's Computing System or networks or, where the Services are hosted by a third party, that third party's computing systems and networks;
- II. not use, or misuse, the Services in any way which may impair the functionality of the Services or Website, or other systems used to deliver the Services or impair the ability of any other user to use the Services or Website;
- III. not attempt to gain unauthorised access to any materials other than those to which You have been given express permission to access or to Billbe Australia's Computing System on which the Services are hosted;

- IV. not transmit, or input into the Website, any: files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which You do not have the right to use); and
  - V. not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Services or to operate the Website.
- c. **Usage Limitations.** Use of the Service may be subject to limitations, including but not limited to monthly data transmission volume limits, monthly transaction volumes and the number of monthly telephone calls You are permitted to make against Billbe Australia's technical support infrastructure. Any such limitations will be advised.
  - d. **Indemnity.** To the fullest extent permitted by applicable law, you agree to indemnify and hold Billbe Australia harmless from and against all claims, costs, damages and expenses of any kind (including reasonable lawyer's fees) arising out of: (i) Your breach of any of these terms or any obligation You may have to Billbe Australia as a result of these terms; (ii) any activity which You engage in that involves using the Software; (iii) Your violation of any law or the rights of a third party while using the Software.

### 3. CONFIDENTIALITY AND PRIVACY

- a. **Confidentiality.** Unless one Party has the prior written consent of the other Party or unless required to do so by law:
  - I. each Party will preserve the confidentiality of all Confidential Information of the other Party obtained in connection with these Terms; and
  - II. Neither Party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms.
  - III. Each Party's obligations under this clause will survive termination of these Terms.
- b. The provisions of clauses 3(a)(i) and 3(a)(ii) shall not apply to any information which:
  - I. is or becomes public knowledge other than by a breach of this clause;
  - II. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - III. is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
  - IV. is independently developed without access to the Confidential Information.

### 4. INTELLECTUAL PROPERTY

- a. **General.** Title to, and ownership of, all Intellectual Property Rights in the Software, the Website and any documentation relating to the Software remains the property of Billbe Australia (or its licensors) and You acquire no right, title or interest in or to that that intellectual property by virtue of these terms other than as expressly stated in these terms.
- b. **Ownership of Data.** Title to, and all Intellectual Property Rights in, the Data remains Your property. However, Your access to the Data is contingent on remaining a registered User of

the Service. You grant Billbe Australia a licence to use, copy, transmit, store, and back-up Your information and Data for the purposes of enabling You to access and use the Service and for any other purpose related to provision of the Service to You.

- c. **Backup of Data.** Billbe Australia adheres to its best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss of Data. Billbe Australia expressly excludes liability for any loss of Data no matter how caused.

## 5. WARRANTIES AND ACKNOWLEDGEMENTS

- a. **Authority of Invited Users.** Invited Users warrant that by registering to use the Service on behalf of You, the Invited User has been authorised by You to agree to these terms on Your behalf and agrees that by so registering to use the Service, the Barrister is bound by these Terms (without limiting the Invited Users personal obligations under these Terms).
- b. **Acknowledgement.** You acknowledge that You are authorised to use the Services and the Website and to access the information and Data that You input into the Website, including any information or Data input into the Website by an Invited User. You are also authorised to access the processed information and Data that is made available to You through Your use of the Website and the Services (whether that information and Data is Your own or is entered for you by an Invited User).
- c. Billbe Australia has no responsibility to any person other than You and nothing in this Agreement confers, or purports to confer, a benefit on any person other than You. If You use the Services or access the Website on behalf of or for the benefit of anyone other than yourself You agree that:
  - I. You are responsible for ensuring that You have the right to do so;
  - II. You are responsible for authorising any person who is given access to information or Data, and you agree that Billbe Australia has no obligation to provide any person access to such information or Data without Your authorisation and may refer any requests for information to You to address; and You will indemnify Billbe Australia against any claims or loss relating to:
    - A. Billbe Australia's refusal to provide any person access to Your information or Data in accordance with these Terms,
    - B. Billbe Australia's making available information or Data to any person with Your authorisation.
    - C. The provision of, access to, and use of, the Services is on an "as is" basis and at Your own risk.
- d. Billbe Australia does not warrant that the use of the Software will be uninterrupted or error free. You acknowledge that the existence of any errors will not constitute a breach of this Agreement. Among other things, the operation and availability of the systems used for accessing the Service, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Services. Billbe Australia is not in any way responsible for any such interference or prevention of Your access or use of the Services.

- e. Billbe is not Your accountant and use of Billbe Australia's Software does not constitute the receipt of accounting advice. If You have any accounting questions, please contact an accountant.
- f. It is Your sole responsibility to determine that Your use of the Service complies with Your obligations as a barrister under the relevant Costs Legislation and is suitable for the fulfilment of such obligations.
- g. You remain solely responsible for complying with all applicable accounting, tax and other laws. It is Your responsibility to check that storage of and access to your Data via the Software and the Website will comply with laws applicable to you (including any laws requiring you to retain records).
- h. **No warranties.** You acknowledge that:
  - I. Billbe Australia gives no warranty about the Software. While we endeavour to provide the best Software and support service we can, You understand and agree that the Software and service is provided “as is” and “as available”, without express or implied warranty or condition of any kind.
  - II. Your choice to use the Software is made on the basis of your evaluation or judgment and you acknowledge that Billbe Australia does not warrant that the Software will be suitable for your particular purposes and you further acknowledge that at no time prior to entering into this Agreement have you relied on the skill or judgment of the Licensor and given your own professional obligations it would be unreasonable for you to rely on any such skill or judgement.

For the avoidance of doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

- i. **Statutory Consumer Guarantees Not Applicable.** You acknowledge that since you are not being charged to use the Software and that both the Service enabled by the Software and the associated technical support services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, you are not a consumer for the purpose of the statutory consumer guarantee provisions of the *Australian Consumer Law (ACL)*. (The full text of the ACL is set out in Schedule 2 of the *Competition and Consumer Act 2010*).

You further acknowledge that since You are not acquiring the service enabled by the Software as a “consumer” under the ACL, this transaction is not subject to the statutory consumer guarantee provisions.

## 6. LIMITATION OF LIABILITY

- a. Nothing in this Agreement excludes, restricts or modifies the application of any legislation which by the law of any jurisdiction cannot be excluded, restricted or modified.
- b. Subject to (a), above, to the maximum extent permitted by law, Billbe Australia excludes all liability and responsibility to You (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of information, Data, profits and

savings) or damage resulting, directly or indirectly, from any use of, or reliance on, the Software or Website.

If You are not satisfied with the Software, Your sole and exclusive remedy is to stop using the Software.

## 7. TERMINATION

a. **Breach.** If You:

- I. breach any of these Terms and do not remedy the breach within 14 days after receiving notice of the breach;
- II. become a bankrupt, whether as a result of a sequestration order or otherwise;

Billbe Australia may take any or all of the following actions, at its sole discretion:

- III. Terminate this Agreement and Your use of the Software and the Website on the expiration of two (2) day's notice in writing;
  - IV. Suspend for any definite or indefinite period of time, Your use of the Software and the Website;
  - V. Suspend or terminate access to all or any Data;
  - VI. Take any or all of the preceding actions in relation to Invited Users authorised by You to access to Your information or Data.
- b. **Accrued Rights.** Termination of these terms is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement You will immediately cease to use the Services and the Website.
- c. **Termination by You.** You may terminate this Agreement for any reason by giving seven (7) day's notice to Billbe via the email address [support@billbe.com.au](mailto:support@billbe.com.au).
- d. **Survival.** Clauses concerning confidentiality and privacy survive the expiry or termination of these Terms.

## 8. TECHNICAL SUPPORT

- a. **Technical Problems.** In the case of technical problems You must make all reasonable efforts to investigate and diagnose problems before contacting Billbe. If You still need technical help, please check the support provided online by on the Website or failing that email us at [support@billbe.com.au](mailto:support@billbe.com.au). Technical Support will also be available, by telephone 0458 581 806 or +61 458 581 806, between the hours of 8.30am and 10pm AEST.
- b. **Service availability.** Billbe envisages that the Software should be available 24 hours a day, seven days a week, save for those rare occasions when the Software or the Website is unavailable due to updates or maintenance. All such foreseeable interruptions (and the anticipated duration of the interruption) will be advertised on the Website, at least five (5) business days before they occur.

## 9. GENERAL

- a. **Entire agreement.** These Terms and the terms of any other notices or instructions given to You under these Terms of Use, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between You and Billbe Australia relating to the Software and the other matters dealt with in these terms.
- b. **Waiver.** If either Party waives any breach of these terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.
- c. **Delays.** Neither Party will be liable for any delay or failure in performance of its obligations under these terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.
- d. **No Assignment.** You may not assign or transfer any rights to any other person without Billbe Australia's prior written consent.
- e. **Governing law and jurisdiction.** These terms are governed by the laws of New South Wales laws and You submit to the exclusive jurisdiction of the state courts of New South Wales for all disputes arising out of or in connection with this Agreement.
- f. **Severability.** If any part or provision of these terms found by a court to be invalid or unenforceable for any reason or to any extent, such invalidity or unenforceability shall not in any manner affect or render invalid the remaining provisions of this Agreement.
- g. **Notices.** Any notice given under these terms by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to Billbe must be sent to [info@billbe.com.au](mailto:info@billbe.com.au) or to any other email address notified by email to You by Billbe. Notices to You will be sent to the email address which You provided when setting up Your access to the Service.
- h. **Rights of Third Parties.** A person who is not a party to these Terms has no right to benefit under or to enforce any term of these terms.