

referral program terms and conditions

Version 2019.01

These terms and conditions ("**T&Cs**") set out the terms on which you ("**You**" or "**Your**") will refer potential clients to ExCD Pty Ltd ACN 096 998 211 ("**ExCD**") and its related entity, Pronamics Pty Ltd ACN 096 998 211 ("**Pronamics**").

In these T&Cs, ExCD and Pronamics are individually and collectively called "**We**", "**Our**" or "**Us**".

Pronamics owns the following computer software products ("**Products**"), and sells those Products with the assistance of ExCD:

- "Expert Estimation", "Expert Estimation Management", "Expert Estimation Excelerate", "Expert Estimation Genesis" or "Expert Estimation Express", which have been developed by Pronamics for and used by engineering, construction and mining businesses to calculate the costs and expenses of the provision of services for an engineering, construction or mining industries project;
- "Expert Project" and "Expert Project Express", which have been created for and used by engineering, construction and mining businesses for the purposes of recording and comparing the actual costs of provision of services on an engineering, construction or mining industries project against their budgeted costs for such a project; and
- "Cost to Complete" which has been created for and used by engineering, construction and mining businesses for the purpose of forecasting costs during an engineering, construction or mining industries project.

1. Interpretation

In these T&Cs, the following definitions will apply:

"*Business Day*" means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Brisbane, Queensland.

"*Claim Form*" means the form attached at the end of these T&Cs under the heading "A" claim form.

"*Dispute*" means any dispute, controversy or claim arising out of or relating to these T&Cs, including as to whether the Eligible Client was referred to Us by You or whether you complied with these T&Cs.

"*Eligible Client*" means an individual or entity that:

- (a) is introduced by You to Us through our online referral form;
- (b) as a result of the referral, either:
 - (i) purchases a Product from Us; or
 - (ii) subscribes to a Product for at least six (6) consecutive months; and
- (c) pays Us the full amount of the relevant Subscription Fee or Licence Fee for the Products;

but does not include:

- (d) You or a Related Party; or
- (e) any of Our former or current clients at the time of the referral.

"*GST*" has the meaning set out in the A New Tax System (Goods and Services) Tax Act 1999

"*Licence Fee*" means the first amount payable by the Eligible Client under the purchase agreement for the relevant Product.

"*Subscription Fee*" means the equivalent of one month's subscription fee payable by the Eligible Client for the relevant Product, averaged over the first six (6) months of the subscription.

"*Related Party*" means:

- (a) Your agents and contractors;
- (b) any spouse, partner, parent, sibling or child of You, or any of those persons' spouses, partners, siblings or children;
- (c) any person You owe a fiduciary duty to, such as a beneficiary under a trust or a client of Your business; or
- (d) any person employed by You or Your employer;

2. Acceptance

You will be deemed to have accepted these T&Cs, and they will be taken to apply in respect of any successful referral, if you:

- (a) submit a referral to Us on Our website; or
- (b) after being provided with a copy of these T&Cs, provide Us with the contact details of a person who you believe may be interested in one or more of our Products.

3. Referrer Fee for the Products

- (a) We will pay you a fee ("**Referral Fee**") for each Eligible Client you refer to Us.
- (b) Payment of the Referral Fee will be conditional on:
 - (i) you complying with the Sales Process set out in Clause 4 below;
 - (ii) there being no conflict of interest between You and the Client relating to the payment of the Referrer Fee;
 - (iii) if You are required by legislation to notify the Eligible Client that you will be paid the Referrer Fee by Us, you making that requisite disclosure; and
 - (iv) there being no Dispute the subject of the dispute resolution procedures in Clause 6 below.
- (c) The Referral Fee will be:
 - (i) 5% of the Licence Fee; and
 - (ii) the Subscription Fee;less any amount attributable to:
 - (iii) discounts and incentives;
 - (iv) support and maintenance provided by Pronamics for a Product; or
 - (v) any GST, unless you are registered for GST and comply with Commonwealth taxation legislation in relation to the payment of that GST to the Government.

4. Sales Process and Lodgement of Claim Form

- (a) On introduction of the potential client to Us, We will contact that person in a timely manner to encourage the purchase of or subscription to Our Products;
- (b) In the interests of transparency, We will disclose this referral to the potential client and confirm their consent to contact by Us. By accepting these T&Cs, You accept and consent to Us disclosing the details of this referral to the potential client, including your identity.
- (c) Within 14 days of Us receiving full payment of the Licence Fee or Subscription Fee from an Eligible Client, We will send You a copy of the Claim Form with the details of the Referrer Fee payable to you.
- (d) Within 14 days of receiving the Claim Form from Us, You must give us:
 - (i) a fully completed and signed copy of the Claim Form provided by Us; and
 - (ii) if you are registered for GST, a tax invoice for the Referrer Fee that complies with Commonwealth taxation legislation.
- (e) Within 30 days of Us receiving your signed Claim Form and, if applicable, your tax invoice, the Referrer Fee will be paid to you using one of the following methods at your reasonable election:

- (i) by direct transfer into a bank account nominated by You;
- (ii) by a gift card of Your choice (subject to the terms and conditions of that gift card), to the closest whole dollar amount; or
- (iii) by a voucher to be used as part or whole payment towards the fee payable under a support and maintenance agreement between You and Pronamics.

5. Relationship

- (a) The relationship created between the parties is one of independent contractors.
- (b) Nothing in these T&Cs is deemed to create any partnership, joint venture, agency, or employment relationship between You and Us.
- (c) You will not make any representations to any person or purport to bind Us in any manner without Our prior written consent to do so and you will not engage in any false or misleading conduct in referring a potential client to Us.
- (d) You will not have to undergo any accreditation process; or pay an accreditation fee to make a referral to Us.

6. Dispute Resolution

- (a) If either party to these T&Cs believes in good faith that a Dispute has arisen under these T&Cs, including as to whether the Eligible Client was referred to Us by You, that party may serve a notice upon the other party (a "**Dispute Notice**") requiring it to follow this procedure and nominating a representative of that party with authority to settle the Dispute'
- (b) Within 7 days of receiving the notice, the party receiving the Dispute Notice must serve a notice on the other party (a "**Reply Notice**"), nominating a representative with authority to settle the dispute.
- (c) The representatives of each party will meet within 7 days of the receipt of the Reply Notice and will use their best endeavours to resolve the Dispute.
- (d) Failing agreement within 14 days after either party has given to the other a written request to agree on the appointment of an arbitrator, upon the application of a party, the Dispute shall be determined by an arbitrator to be appointed by the President for the time being of the Queensland Law Society.

7. General Rights and Obligations

- (a) By accepting these T&Cs, You warrant that:
 - (i) You have informed the potential client of your intention to refer them to Us; and
 - (ii) they have informed you that they will accept this referral.
- (b) You must only use information regarding the Products including but not limited to, information about the prices for the Products, client contacts, financial information of any kind about Us, details of the Products in any medium and know-how of any kind provided to You by Us ("**Confidential Information**") and on termination of Your appointment, you will return all Confidential Information to Us.
- (c) These T&Cs may be terminated by You or Us on 30 days' notice in writing to Us.
- (d) These T&Cs set out the entire agreement in relation to referrals by You to Us, and supersede all prior written or oral agreements or undertakings regarding that subject matter.
- (e) You may not assign any rights or obligations under these T&Cs without Our prior written consent.
- (f) To the extent permitted by law, You indemnify Us and keep Us indemnified against any loss, damage, costs or expenses (including legal expenses on a solicitor and own client basis) arising out of, or in connection with:
 - (i) any breach of these T&Cs by you, your contractors, agents or employees; or
 - (ii) any act or omission by You in referring the potential client to Us or accepting the Referrer Fee;
- (g) These T&Cs are governed by the laws of Queensland, Australia, and the parties agree to submit to the non-exclusive jurisdiction of its courts.



“A” claim form

Referrer's Details – Admin Use Only

Company Name and ABN

(if applicable)

Referrer's Name

Sale Information – Admin Use Only

New Client Referred

Pronamics Proposal Number

Date of Purchase

Licences Type(s) Purchased

Expert Estimation Express

Expert Estimation Genesis

Expert Project Express

Expert Project

Cost To Complete

Total of Discounts Applied to Purchase

Total of Purchase or Subscription Fee

Total Referrer Fee



Referrer Fee Payment – Referrer to complete. Please select preferred option.

Tax Invoice	Please provide a Tax Invoice to ExCD Pty Ltd for amount listed under Total EE Referrer Fee	<input type="checkbox"/>
Gift Card	<i>Referrer is required to declare all income as required by Australian Tax Legislation</i>	
	Woolworths Wish	<input type="checkbox"/>
	Coles/Myer	<input type="checkbox"/>
	Bunnings	<input type="checkbox"/>
	Flight Centre	<input type="checkbox"/>
	Nominate a Gift Card of your choice:	<input type="checkbox"/>
	Please supply address for Gift Card to be sent:	
Pronamics Maintenance	A voucher to be used towards the Referrer's personal Pronamics software product annual maintenance fee	<input type="checkbox"/>

Referrers Signature – Referrer to complete.

The Referrer agrees that the details in this summary are correct and agrees the Terms and Conditions attached to this Claim Form

Signature

Name in Full [Printed]

Date

Tax Invoice Attached Yes
 No