

Project123 Master Subscription Agreement

Attention

The following terms and conditions (the "Agreement") governing your use of **Project123's** Service (the "Service") will be legally binding upon you by clicking the "Accept" button displayed as part of the Order process.

If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these terms and conditions, in which case the terms "you" or "your" shall refer to such entity. If you do not have such authority or if you do not agree with these terms and conditions, you must select the "Cancel" button and may not use the Service.

The Service is offered in a number of versions and this Agreement governs your use of all versions of the Service, including any free trial or promotional versions made available at **Project123's** sole discretion.

Authorization to use the Service

This Agreement commences on the Effective Date. As part of this Agreement, **Project123** will provide you with use of the Service. Your registration for or use of the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the **Project123** website incorporated by reference herein, including but not limited to **Project123's** privacy policies. These may be viewed through our website at <http://www.Project123.com>.

Project123 hereby grants you a non-exclusive, non-transferable, right to use the Service, solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by **Project123** and its licensors.

If you become a paying customer or a Special Promotion customer of the Service, you agree that **Project123** can disclose the fact that you are a paying customer and the version of the Service that you are using.

You shall not: (1) interfere with or disrupt the integrity or performance of the Service or the data contained therein; (2) attempt to gain unauthorized access to the Service or its related systems or networks (3) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (4) send or store infringing, obscene, threatening, libellous, or otherwise unlawful or tortuous material, including material harmful to children or volatiles third party privacy rights; or (5) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs.

You shall not (1) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (2) modify or make derivative works based upon the Service or the Content; (3) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (4) reverse engineer or access the Service in order to

Project123 Master Subscription Agreement

(a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service.

User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who no longer use the Service.

You may not access the Service if in **Project123's** sole discretion you are a direct competitor of **Project123**, except with **Project123's** prior written consent. In addition, you may not access the Service for purposes of monitoring its functionality, performance, availability, or for any other competitive or benchmarking purposes.

Project123 may notify you from time to time about guidelines applying to the use of the Service. **Project123** may do this by posting instructions on the **Project123** website. Those guidelines form part of this Agreement, and you must comply with them, and ensure that those you are responsible for comply with them, from the time they are posted.

2. Your Responsibilities

You are responsible for all activity occurring under your User accounts and you shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (1) notify **Project123** immediately of any unauthorized use of any account or password or any other known or suspected breach of security; (2) report to **Project123** immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (3) not impersonate another **Project123** user or provide false identity information to gain access to or use the Service.

You agree to provide **Project123** with complete and accurate contact and billing information. This information includes your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and License Administrator. You agree to update this information within 30 days of any change to it. If the contact information you have provided is false or fraudulent, **Project123** reserves the right to terminate your access to the Service in addition to any other legal remedies.

Access to the Service is by password. Once the parties have agreed to the provision of the Service, you must choose passwords.

You are responsible for the safekeeping of passwords and for all use or access of the Service or any other Services, by anyone using the password or passwords, on you premises, under your control, or authorised by you to access the Service. you will be liable for and indemnify **Project123.com** against any costs (including legal costs on a solicitor and own client basis), expenses, damages, losses (including loss of profits, data or business opportunity) and liabilities suffered or incurred by us that arise from any breach of this Agreement or any act

Project123 Master Subscription Agreement

or omission by you or its agents, subcontractors, employees, clients or any of the other third parties referred to in this clause 2. Because you are responsible for passwords we recommend that you commit them to memory, do not record them in writing, and do not tell them to anyone (including **Project123.com** staff or representatives).

You must change passwords immediately if requested to do so, and comply with any other special security requirements that are notified to you. You shall change passwords immediately if either party suspects any unauthorised use or disclosure of the passwords and contact **Project123.com** thereof.

3. Payment of Fees

You shall pay all fees to your account in accordance with the fees and billing terms in effect at the time a fee is due and payable. The initial fees will be equal to the total number of User licenses requested times the User license fee currently in effect. Payments are made in advance, consistent with the Initial Term, or as otherwise mutually agreed upon. All payment obligations are non-cancellable and all amounts paid are non-refundable. You are responsible for paying for all User licenses ordered for the entire License Term, whether or not such User licenses are actively used. Except for use of a free trial or promotional version of the Service, you must provide **Project123** with valid credit card or approved purchase order information as a condition to signing up for the Service. An authorized License Administrator may add licenses by executing an additional Order Form. The license fee for the added licenses will be the then current license fee and licenses added in the middle of a billing month will be charged in full for that billing month. **Project123** reserves the right to modify its fees and to introduce new fees at any time. Except for information published on **Project123's** website, all other pricing terms are confidential, and you agree not to disclose them to any third party.

Upon the expiration of the Initial Term, and any subsequent License Term, this Agreement will automatically renew for successive terms equal in duration to the previous term, or as otherwise mutually agreed, at **Project123's** then current fees.

At least 30 days before expiration of the Initial Term, and any subsequent License Term, **Project123** will contact you by electronic mail advising you of the fees due and the renewal date for the next License Term.

If **Project123** does not receive notice of termination from you as set out in the Termination section herein, **Project123** will automatically renew and bill your credit card or issue an invoice to you on the renewal date. The renewal fee will be equal to the then current number of total User licenses times the then current license fee. Fees for other services will be charged on an-as-quoted basis.

Unless **Project123** in its discretion determines otherwise, all paying customers will be billed in U.S. dollars.

Project123 Master Subscription Agreement

Project123's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties.

If you believe your bill is incorrect, you must contact us in writing within 30 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

4. Non-Payment of Fees

In addition to any other rights granted to **Project123** herein, **Project123** reserves the right to suspend or terminate this Agreement and your access to the Service if your account falls into arrears. Accounts in arrears are subject to interest of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. You will continue to be charged for User licenses during any period of suspension. If you or **Project123** initiates termination of this Agreement, you will be obligated to pay the balance due on your account computed in accordance with the Payment of Fees section above. You agree that **Project123** may charge such unpaid fees to your credit card or otherwise bill you for such unpaid fees.

Project123 reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Service. You agree and acknowledge that **Project123** has no obligation to retain your Data and that such Data may be irretrievably deleted if your account is 30 days or more delinquent.

5. Termination or Adjustment

Either party may terminate this Agreement or reduce the number of licenses, effective only upon the expiration of the then current License Term, by notifying the other party at least five (5) business days prior to the renewal date for the following License Term. In the case of free trials and Special Promotion, notifications provided through the Service indicating the remaining number of days in the free trial or Special Promotion shall constitute notice of termination. In the case of Special Promotions, additional Special Usage restrictions are imposed and if not complied with shall constitute notice of termination. In the event this Agreement is terminated (other than by reason of your breach or you have completed a free trial or Special Promotion), **Project123** will make available to you a file of your Data within 30 days of termination if you so request at the time of termination. You agree and acknowledge that **Project123** has no obligation to retain your Data and may delete such Data 30 days after termination.

Any breach of your payment obligations or unauthorized use of the Service, Content or Technology will be deemed a material breach of this Agreement.

Project123 Master Subscription Agreement

6. Termination for Cause

Any breach of your payment obligations or unauthorized use of the Service, Content or Technology will be deemed a material breach of this Agreement. **Project123**, in its sole discretion, may terminate your password, account or use of the Service if you breach or otherwise fail to comply with this Agreement. In addition, **Project123** may terminate a free account (including any trial or Special Promotion version) at any time at its sole discretion.

7. Data

Project123 does not own any data, information or material that you submit to the Service in the course of using the Service ("Data"). You, not **Project123**, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Data, and **Project123** shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Data. In the event this Agreement is terminated (other than by reason of your breach), **Project123** will make available to you a file of your Data within 30 days of termination if you so request at the time of termination. **Project123** reserves the right to withhold, remove and/or discard Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Data immediately ceases, and **Project123** shall have no obligation to maintain or forward any Data.

The maximum disk storage space provided to you at no additional charge is 5 MB per User license for the Free Trial and Special Promotion versions and 10 MB per User license for all other versions. If the amount of disk storage required exceeds these limits, **Project123** reserves the right to charge you at the then-current storage fees. **Project123** will use reasonable efforts to notify you when the average storage used per license reaches approximately 90% of the maximum; however, any failure by **Project123** to so notify you shall not affect your responsibility for such additional storage charges. **Project123** reserves the right to establish or modify its general practices and limits relating to storage of Data.

You agree and acknowledge that **Project123** has no obligation to retain your Data, and may delete such Data, if you have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been resolved within 30 days of notice of such breach.

8. Intellectual Property

Project123 alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the **Project123** Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the Technology or the Intellectual Property Rights owned by **Project123**. The **Project123** name, the **Project123** logo, and the product names associated with the Service are trademarks of **Project123** and no right or license is granted to use them.

Project123 Master Subscription Agreement

9. Representations & Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. **Project123** represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with the **Project123** help documentation under normal use and circumstances. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct.

10. Mutual Indemnification

You shall indemnify and hold **Project123**, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (1) a claim alleging that use of the Data infringes the rights of, or has caused harm to, a third party; (2) a claim, which if true, would constitute a violation by you of your representations and warranties; or (3) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that **Project123** (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defence and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release **Project123** of all liability and such settlement does not affect **Project123**'s business or Service); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

Project123 shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (1) a claim alleging that the Service directly infringes a copyright, a New Zealand patent issued as of the Effective Date, or a trademark of a third party; (2) a claim, which if true, would constitute a violation by **Project123** of its representations or warranties; or (3) a claim arising from breach of this Agreement by **Project123**; provided that you (a) promptly give written notice of the claim to **Project123**; (b) give **Project123** sole control of the defence and settlement of the claim (provided that **Project123** may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to **Project123** all available information and assistance; and (d) have not compromised or settled such claim. **Project123** shall have no indemnification obligation, and you shall indemnify **Project123** pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of your products, services, software, hardware or business processes.

Project123 Master Subscription Agreement

11. Disclaimer of Warranties

Project123 and its licensors make no representation, warranty, or guaranty as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the Service or any Content.

Project123 and its licensors do not represent or warrant that (1) the use of the service will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data, (2) the service will meet your requirements or expectations, (3) any stored data will be accurate or reliable, (4) the quality of any products, services, information, or other material purchased or obtained by you through the service will meet your requirements or expectations, (5) errors or defects will be corrected, or (6) the service or the server(s) that make the service available are free of viruses or other harmful components. The Service and all Content is provided to you strictly on an "as is" basis. All conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law by **Project123** and its licensors.

The Service may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. **Project123** is not responsible for any delays, delivery failures, or other damage resulting from such problems.

12. Limitation of Liability

In no event shall either party's aggregate liability exceed the amounts actually paid by and/or due from you in the twelve (12) month period immediately preceding the event giving rise to such claim. In no event shall either party and/or its licensors be liable to anyone for any indirect, punitive, special, exemplary, incidental, consequential or other damages of any type or kind (including loss of data, revenue, profits, use or other economic advantage) arising out of, or in any way connected with this service, including but not limited to the use or inability to use the service, or for any content obtained from or through the service, any interruption, inaccuracy, error or omission, regardless of cause in the content, even if the party from which damages are being sought or such party's licensors have been previously advised of the possibility of such damages.

13. Notice

Project123 may give notice to you at any time by electronic mail to your e-mail address on record in **Project123**'s account information, or by written communication sent by first class mail or pre-paid post to your address on record in **Project123**'s account information. You may give notice to **Project123** at any time by electronic mail to our email address: bostonlegal@Project123software.com, or by written communication sent by first class mail or pre-paid post to our principal office and marked for the attention of the Finance Director. Such notices shall be deemed to have been given upon the expiration of 2 days after mailing or posting if sent by first class mail or pre-paid post domestically, 7 days after mailing or

Project123 Master Subscription Agreement

posting if sent by first class mail or pre-paid post internationally, or 1 day after sending if sent by email.

14. Confidentiality

Unless the relevant party has the prior written consent of the other or unless required to do so by law: (1) each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with this Agreement; (2) 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 this Agreement; (3) each party's obligations under this clause will survive termination of this Agreement.

The provisions of said Confidentiality clauses shall not apply to any information which: (a) is or becomes public knowledge other than by a breach of this Agreement; (b) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or (c) is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party.

15. Assignment

This Agreement may not be assigned by you without the prior written approval of **Project123**, approval of which shall not unreasonably be withheld. Any actual or proposed change in control of you that results or would result in a direct competitor of **Project123** directly or indirectly owning or controlling 50% or more of you shall entitle **Project123** to terminate this Agreement for cause immediately upon written notice.

This agreement may be assigned without your consent by **Project123** to (1) a parent or subsidiary, (2) an acquirer of assets, or (3) a successor by merger.

Any purported assignment in violation of this section shall be void.

16. Modification to Terms

Project123 reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Service. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.

Project123 Master Subscription Agreement

17. General

This Agreement shall be governed by New Zealand law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the courts located in Auckland, New Zealand. No text or information set forth on any other purchase order, pre-printed form or document (other than an Order Form, if applicable) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between you and **Project123** as a result of this agreement or use of the Service. The failure of **Project123** to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by **Project123** in writing. This Agreement, together with any applicable Order Form, comprises the entire agreement between you and **Project123** and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

Project123 and its licensors make no representation that the Service is appropriate or available for use in other locations. If you use the Service from outside New Zealand, you are solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries.

In the event of any conflict between the terms of this Agreement and the terms of any Order Form, the terms of this Agreement shall prevail.

Definitions

As used in this Agreement and in any Order Forms now or hereafter associated herewith:

"Agreement" means these online terms of use, any Order Forms, whether written or submitted online via the **Project123** website, and any materials available on the **Project123** website specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by **Project123** from time to time in its sole discretion;

"Confidential Information" means 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. ;

"Content" means the audio and visual information, documents, software, products and services contained or made available to you in the course of using the Service;

"Data" means any data, information or material provided or submitted by you to the Service in the course of using the Service;

Project123 Master Subscription Agreement

"**Project123**" means collectively **Project123** Limited, a limited liability company incorporated in New Zealand under Company Number: 2127143

"Effective Date" means the earlier of either the date this Agreement is accepted by you by selecting the "Accept" button displayed as part of the ordering process or the date you begin using the Service;

"Initial Term" means the initial License Term period during which you are obligated to pay for the Service equal to the billing frequency selected by you during the subscription process (e.g., if the billing frequency is annually, the Initial Term is one year which is 12 months);

"Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world;

"License Administrator(s)" means those Users designated by you who are authorized to purchase licenses by executing online or written Order Forms and to create User accounts and otherwise administer your use of the Service;

"License Term(s)" means the period(s) during which a specified number of Users are licensed to use the Service pursuant to the Order Form(s);

"Order Form(s)" means the form evidencing the initial subscription for the Service including any free trial versions or Special Promotion and any subsequent order forms submitted online or in written form, specifying, among other things, the number of licenses and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Order Form to be incorporated into and to become a part of this Agreement.

"Service(s)" means the specific edition of **Project123**'s online project execution, control and management service identified during the ordering process, developed, operated, and maintained by **Project123**, accessible via <http://www.Project123.com/customerlogin> or another designated web site or IP address, or ancillary online or offline products and services provided to you by **Project123** including a browser interface and data encryption, transmission, access and storage, to which you are being granted access under this Agreement, including the Content and the Technology.

"Special Promotion" means a limited time based specific edition of **Project123**'s Service available to Users for a specified License Term with Special Usage conditions as outlined in the Order Form.

"Special Usage" means any conditions outlined by **Project123** for the usage of the Service in conjunction with a Special Promotion

Project123 Master Subscription Agreement

"Technology" means all of **Project123**'s proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by **Project123** in providing the Service;

"User(s)" means your employees, representatives, directors, consultants, contractors or agents who are authorized to use the Service and have been supplied unique user identifications and passwords by you (or by **Project123** at your request).