

Terms of Service

When you use our Services you agree to all of these terms. Your use of our Services is also subject to our Cookie Policy and our Privacy Policy, which covers how we collect, use, share, and store your personal information.

These Terms govern your access to and use of our products and services, including those offered through our websites, events, communications (e.g., emails, phone calls, and texts) and mobile applications (collectively, the “**Service**”). “**Moai**” **app** is owned and operated by **ProPal Inc.** Through this document, we will use ProPal and/or Moai interchangeably. You understand that they reference each other. You agree that by clicking “Join Now”, “Register with Moai”, “Sign Up”, “Create Account” or similar, registering, accessing or using our services (described below), you are agreeing to enter into a legally binding contract with ProPal Inc. (even if you are using our Services on behalf of a company). If you do not agree to this contract (“Contract” or “User Agreement”), do not click “Join Now” (or similar) and do not access or otherwise use any of our Services. If you wish to terminate this contract, at any time you can do so by closing your account and no longer accessing or using our Services.

1. DEFINITIONS

- A. **Parties.** “**You**” and “**your**” refer to you, as a user of the Service. A “**user**” is someone who accesses or in any way uses the Service. “**We**,” “**us**,” and “**our**” refer to ProPal and its subsidiaries.
- B. **Content.** “**Content**” means text, images, photos, audio, video, and all other forms of data or communication. “**Your Content**” means Content that you submit or transmit to, through, or in connection with the Service, such as ratings, reviews, photos, videos, direct messages, and information that you contribute to your user profile or suggest for a business page. “**User Content**” means Content that users submit or transmit to, through, or in connection with the Service. “**ProPal Content**” means Content that we create and make available in connection with the Service. “**Moai Content**” means Content that we create and make available in connection with the Service. “**Third Party Content**” means Content that originates from parties other than ProPal or its users, which is made available in connection with the Service. “**Service Content**” means all of the Content that is made available in connection with the Service, including Your Content, User Content, ProPal Content, and Third Party Content.

C. **Sites and Accounts.** “**Consumer Site**” means ProPal’s consumer website (www.ProPal.com and related domains) and mobile applications. “**Consumer Account**” means the account you create to access or use the Consumer Site. “**Business Account**” means the account you create to access or use the ProPal for Business Owners website (biz.ProPal.com and related domains) and mobile applications. “**Account**” means any Consumer Account or Business Account.

2. **CHANGES TO THE TERMS**

We may modify the Terms from time to time. You understand and agree that your access to or use of the Service is governed by the Terms effective at the time of your access to or use of the Service. If we make material changes to these Terms, we will notify you by posting notice on the Service, and/or by other method prior to the effective date of the changes. We will also indicate at the top of this page the date that such changes were last made. You should revisit these Terms on a regular basis as revised versions will be binding on you. **You understand and agree that your continued access to or use of the Service after the effective date of changes to the Terms represents your acceptance of such changes.**

3. **USING THE SERVICE**

- A. **Eligibility.** You must be at least 13 years old or the minimum age required in your country to consent to use the Services. If you are under 18 you must have your parent or legal guardian’s permission to use the Services. To access or use the Service, you must have the requisite power and authority to enter into these Terms.
- B. **Permission to Use the Service.** We grant you permission to use the Service subject to these Terms. Your use of the Service is at your own risk, including the risk that you might be exposed to Content that is offensive, indecent, inaccurate, objectionable, incomplete, fails to provide adequate warning about potential risks or hazards, or is otherwise inappropriate.
- C. **Service Availability.** The Service may be modified, updated, interrupted, suspended or discontinued at any time without notice or liability.
- D. **Accounts.** You must create an Account to use the Service. You are responsible for maintaining the confidentiality of your Account password. You are also responsible for all activities that occur in connection with your Account. You agree to notify us immediately of any unauthorized use of your Account. We reserve the right to close your Account at any time for any or no reason.
We ask that you provide complete and accurate information about yourself when creating an Account in order to bolster your credibility

as a contributor to the Service. You may not impersonate someone else, create multiple Accounts, or transfer your Consumer Account to another person without ProPal's prior approval.

- E. **Communications from ProPal and Others.** By accessing or using the Service, you consent to receive communications from other users and ProPal through the Service, or through any other means such as emails, push notifications, text messages (including SMS and MMS), and phone calls. These communications may promote ProPal or businesses listed on ProPal, and may be initiated by ProPal, businesses listed on ProPal, or other users. You further understand that communications may be sent using an automatic telephone dialing system, and that you may be charged by your phone carrier for certain communications such as SMS messages or phone calls. You agree to notify us immediately if the phone number(s) you have provided to us have been changed or disconnected. Please note that any communications, including phone calls, with ProPal or made through the Service may be monitored and recorded for quality purposes.

4. **CONTENT**

- A. **Responsibility for Your Content.** You alone are responsible for Your Content, and once posted to ProPal, it cannot always be withdrawn. You assume all risks associated with Your Content, including anyone's reliance on its quality, accuracy, or reliability, and any risks associated with personal information you disclose. You represent that you own or have the necessary permissions to use and authorize the use of Your Content as described herein. You may not imply that Your Content is in any way sponsored or endorsed by ProPal.
- You may expose yourself to liability if, for example, Your Content contains material that is false, intentionally misleading, or defamatory; violates any third-party right, including any copyright, trademark, service mark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; contains material that is unlawful, including illegal hate speech or pornography; exploits or otherwise harms minors; violates or advocates the violation of any law or regulation; or violates these Terms.
- B. **What you can do.** You agree that you will comply with all applicable laws, including, without limitation, privacy laws, intellectual property laws, anti-spam laws, export control laws, tax laws, and regulatory requirements;

- C. **What you cannot do.** You may not use our Services for any illegal, harmful, or abusive activity. For example, you may not:
- Use our Services in a way that infringes, misappropriates or violates anyone's rights.
 - Modify, copy, lease, sell or distribute any of our Services.
 - Attempt to or assist anyone to reverse engineer, decompile or discover the source code or underlying components of our Services, including our models, algorithms, or systems (except to the extent this restriction is prohibited by applicable law).
 - Automatically or programmatically extract data or Output (defined below).
 - Represent that Output was human-generated when it was not.
 - Interfere with or disrupt our Services, including circumvent any rate limits or restrictions or bypass any protective measures or safety mitigations we put on our Services.
- D. **Our Right to Use Your Content.** We may use Your Content in a number of different ways, including by publicly displaying it, reformatting it, creating derivative works from it, promoting it, distributing it. As such, you hereby irrevocably grant us world-wide, perpetual, non-exclusive, royalty-free, assignable, sublicensable, transferable rights to use Your Content for any purpose. Please note that you also irrevocably grant the users of the Service and any Other Media the right to access Your Content in connection with their use of the Service and any Other Media. Finally, you irrevocably waive, and cause to be waived, against ProPal and its users any claims and assertions of moral rights or attribution with respect to Your Content. By "use" we mean use, copy, publicly perform and display, reproduce, distribute, modify, translate, remove, analyze, commercialize, and prepare derivative works of Your Content.
- E. **Ownership.** As between you and ProPal, you own Your Content. We own the ProPal Content, including but not limited to visual interfaces, interactive features, graphics, design, compilation (including, but not limited to, our selection, coordination, aggregation, and arrangement of User Content and other Service Content), computer code, products, software, aggregate ratings, and all other elements and components of the Service excluding Your Content, User Content and Third Party Content. We also own the copyrights, trademarks, service marks, trade names, trade secrets, and other intellectual and proprietary rights throughout the world associated with the ProPal Content and the Service, which are protected by copyright, trade dress, patent, trademark, and trade secret laws and all other

applicable intellectual and proprietary rights and laws. As such, you may not sell, license, copy, publish, modify, reproduce, distribute, create derivative works or adaptations of, publicly display or in any way use or exploit any of the ProPal Content in whole or in part except as expressly authorized by us. Except as expressly and unambiguously provided herein, we do not grant you any express or implied rights, and all rights in and to the Service and the ProPal Content are retained by us.

- F. **Advertising.** ProPal and its licensees may publicly display advertisements, paid content, and other information nearby or in association with Your Content. You are not entitled to any compensation for such advertisements. The manner, mode and extent of such advertising are subject to change without specific notice to you.
- G. **Other.** User Content (including any that may have been created by users employed or contracted by ProPal) does not necessarily reflect the opinion of ProPal. Except as required by law, we have no obligation to retain or provide you with copies of Your Content, and we do not guarantee any confidentiality with respect to Your Content. We reserve the right to remove, screen, edit, or reinstate User Content at our sole discretion for any reason or no reason, and without notice to you. ProPal does not attempt to verify any licenses a local business or its representatives may have, and consumers should inquire about any such licenses with the business directly.

5. **BOOKING AND TRANSACTING**

- A. **Generally.** You can access features through the Service that allow you to book or transact online with local businesses. These features may be provided by ProPal's third-party partners and their use may be governed by different or additional terms presented to you as part of the booking or transaction process. Please note that such third-party partners and/or the transacting local businesses themselves are responsible for fulfilling such bookings and transactions.
- B. **Payments and Cancellations.** You may be required to provide your credit card information to confirm a booking, and will be charged any applicable fees, including cancellation or no-show fees in accordance with the transacting local business's cancellation policy provided at the time of booking. You agree that ProPal may facilitate any such payments and charges on behalf of the transacting local business.

6. **REPRESENTATIONS AND WARRANTIES**

We are under no obligation to enforce the Terms on your behalf against another user. While we encourage you to let us know if you believe another user has

violated the Terms, we reserve the right to investigate and take appropriate action at our sole discretion.

- A. You represent and warrant that you have read and understood our Privacy Policy. If you use the Service outside of the United States of America, you consent to having your personal data transferred to and processed in the United States of America; and
- B. You also represent and warrant that you will not, and will not assist, encourage, or enable others to use the Service to:
 - i. Violate our Terms, including the Content Guidelines and Event Terms and Conditions;
 - ii. Post any fake or defamatory review, trade reviews with others, or compensate someone or be compensated to post, refrain from posting, or remove a review;
 - iii. Violate any third party's rights, including any breach of confidence, copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right;
 - iv. Threaten, stalk, harm, or harass others, or promote bigotry or discrimination;
 - v. Promote a business or other commercial venture or event, or otherwise use the Service for commercial purposes, except in connection with a Business Account in accordance with the Business Terms;
 - vi. Send bulk emails, surveys, or other mass messaging, whether commercial in nature or not; engage in keyword spamming, or otherwise attempt to manipulate the Service's search results, review Recommendation Software (as defined in the Business Terms below), or any third party website;
 - vii. Solicit personal information from minors, or submit or transmit pornography;
 - viii. Violate any applicable law;
 - ix. Modify, adapt, appropriate, reproduce, distribute, translate, create derivative works or adaptations of, publicly display, sell, trade, or in any way exploit the Service or Service Content (other than Your Content), except as expressly authorized by ProPal;
 - x. Use any robot, spider, Service search/retrieval application, or other automated device, process or means to access, retrieve, copy, scrape, or index any portion of the Service or any Service Content, except as expressly permitted by ProPal;

- xi. Record, process, or mine information about users;
- xii. Access, retrieve or index any portion of the Service for purposes of constructing or populating a searchable database of business reviews;
- xiii. Use any device, software or routine that interferes with the proper working of the Service, or otherwise attempt to interfere with the proper working of the Service; or
- xiv. Remove, circumvent, disable, damage or otherwise interfere with any security-related features of the Service, features that prevent or restrict the use or copying of Service Content, or features that enforce limitations on the use of the Service.

7. **SUGGESTIONS AND IMPROVEMENTS**

By sending us any ideas, suggestions, documents or proposals ("**Feedback**"), you agree that (i) your Feedback does not contain any third party confidential or proprietary information, (ii) we are under no obligation of confidentiality, express or implied, with respect to the Feedback, (iii) we may have something similar to the Feedback already under consideration or in development, (iv) we have no obligation to review, consider, or implement the Feedback, or to return to you all or part of the Feedback, and (v) you grant us an irrevocable, non-exclusive, royalty-free, perpetual, worldwide, assignable, sublicensable, transferable license to use, modify, prepare derivative works of, publish, distribute and sublicense the Feedback, and you irrevocably waive, and cause to be waived, against ProPal and its users any claims and assertions of any moral rights contained in such Feedback.

8. **THIRD PARTY CONTENT AND SERVICES**

- A. The Service may host Third Party Content, or include links to other websites or applications (each, a "**Third Party Service**"). We do not control or endorse any Third Party Content or Third Party Service. You agree that we are not responsible for the availability, accuracy, or content of any such Third Party Content or Third Party Service. Your use of and reliance on any Third Party Content or Third Party Service is at your own risk.

Some of the services made available through the Service and Third Party Services may be subject to additional third party terms of service, privacy policies, licensing terms and disclosures, and other terms, conditions, and policies. It is your responsibility to familiarize yourself with any such applicable third party terms.

9. **INDEMNITY**

You agree to indemnify, defend, and hold harmless ProPal, its parents, subsidiaries, affiliates, any related companies, suppliers, licensors and partners, and the officers, directors, employees, agents, contractors and representatives

of each of them (collectively, the “**ProPal Entities**”) from and against any and all third party claims, actions, demands, losses, damages, costs, liabilities and expenses (including but not limited to attorneys’ fees and court costs) arising out of or relating to: (i) your access to or use of the Service, including Your Content, (ii) your violation of the Terms, (iii) your breach of your representations and warranties provided under these Terms, (iv) any products or services purchased or obtained by you in connection with the Service, (v) your products or services, or the marketing or provision thereof to end users, or (vi) the infringement by you, or any third party using your Account, of any intellectual property or other right of any person or entity. ProPal reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us and you agree to cooperate with our defense of these claims. You agree not to settle any such matter without the prior written consent of ProPal. ProPal will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

10. DISCLAIMERS AND LIMITATIONS OF LIABILITY

PLEASE READ THIS SECTION CAREFULLY SINCE IT LIMITS THE LIABILITY OF THE ProPal ENTITIES TO YOU. EACH OF THE SUBSECTIONS BELOW ONLY APPLIES UP TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW. NOTHING HEREIN IS INTENDED TO LIMIT ANY RIGHTS YOU MAY HAVE WHICH MAY NOT BE LAWFULLY LIMITED. BY ACCESSING OR USING THE SERVICE, YOU REPRESENT THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO THESE TERMS, INCLUDING THIS SECTION. YOU ARE GIVING UP SUBSTANTIAL LEGAL RIGHTS BY AGREEING TO THESE TERMS.

A. THE SERVICE AND SERVICE CONTENT ARE MADE AVAILABLE TO YOU ON AN “AS IS”, “WITH ALL FAULTS” AND “AS AVAILABLE” BASIS, WITH THE EXPRESS UNDERSTANDING THAT THE PROPAL ENTITIES MAY NOT MONITOR, CONTROL, OR VET USER CONTENT OR THIRD PARTY CONTENT. AS SUCH, YOUR USE OF THE SERVICE IS AT YOUR OWN DISCRETION AND RISK. THE ProPal ENTITIES MAKE NO CLAIMS OR PROMISES ABOUT THE QUALITY, COMPLETENESS, ACCURACY, OR RELIABILITY OF THE SERVICE, ITS SAFETY OR SECURITY, INCLUDING WITHOUT LIMITATION THE SECURITY OF YOUR DATA, OR THE SERVICE CONTENT. ACCORDINGLY, THE ProPal ENTITIES ARE NOT LIABLE TO YOU FOR ANY PERSONAL INJURY, LOSS OR DAMAGE THAT MIGHT ARISE, FOR EXAMPLE, FROM THE SERVICE’S INOPERABILITY, DEPLETION OF BATTERY POWER OR OTHER IMPAIRMENT OF DEVICES USED TO ACCESS THE SERVICE, SERVICE UNAVAILABILITY, SECURITY VULNERABILITIES OR FROM YOUR

RELIANCE ON THE QUALITY, ACCURACY, OR RELIABILITY OF THE BUSINESS LISTINGS, RATINGS, REVIEWS (INCLUDING THEIR CONTENT OR OMISSION OF CONTENT, ORDER, AND DISPLAY), METRICS OR OTHER CONTENT FOUND ON, USED ON, OR MADE AVAILABLE THROUGH THE SERVICE.

- B. THE PROPAL ENTITIES MAKE NO CLAIMS OR PROMISES WITH RESPECT TO ANY THIRD PARTY, SUCH AS THE BUSINESSES OR ADVERTISERS LISTED ON THE SERVICE OR THAT OFFER GOODS OR SERVICES THROUGH THE SERVICE, OR THE SERVICE'S USERS. ACCORDINGLY, THE ProPal ENTITIES ARE NOT LIABLE TO YOU FOR ANY PERSONAL INJURY, LOSS OR DAMAGE THAT MIGHT ARISE FROM ANY SUCH THIRD PARTY'S ACTIONS OR OMISSIONS, INCLUDING, FOR EXAMPLE, IF ANOTHER USER OR BUSINESS MISUSES YOUR CONTENT, IDENTITY OR PERSONAL INFORMATION, OR IF YOU HAVE A NEGATIVE EXPERIENCE WITH ONE OF THE BUSINESSES OR ADVERTISERS LISTED OR FEATURED ON THE SERVICE. YOUR PURCHASE AND USE OF PRODUCTS OR SERVICES OFFERED BY THIRD PARTIES THROUGH THE SERVICE IS AT YOUR OWN DISCRETION AND RISK.
- C. YOUR SOLE AND EXCLUSIVE RIGHT AND REMEDY IN CASE OF DISSATISFACTION WITH THE SERVICE, RELATED SERVICES, OR ANY OTHER GRIEVANCE SHALL BE YOUR TERMINATION AND DISCONTINUATION OF ACCESS TO, OR USE OF THE SERVICE.
- D. THE ProPal ENTITIES' MAXIMUM AGGREGATE LIABILITY TO YOU FOR LOSSES OR DAMAGES THAT YOU SUFFER IN CONNECTION WITH THE SERVICE OR THESE TERMS IS LIMITED TO THE GREATER OF (i) THE AMOUNT PAID, IF ANY, BY YOU TO THE ProPal ENTITIES IN CONNECTION WITH THE SERVICE IN THE 12 MONTHS PRIOR TO THE ACTION GIVING RISE TO LIABILITY, OR (ii) \$100.
- E. THE PROPAL ENTITIES' LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE ProPal ENTITIES WILL NOT BE LIABLE FOR ANY (i) INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, RELIANCE, OR CONSEQUENTIAL DAMAGES, (ii) LOSS OF PROFITS OR REVENUE, (iii) BUSINESS INTERRUPTION, (iv) REPUTATIONAL HARM, (v) LOSS OF INFORMATION OR DATA; OR (vi) LIABILITY WITH RESPECT TO A CONSUMER ALERT POSTED ON ANY PROPAL BUSINESS PAGES FOR YOUR BUSINESS. THE WAIVERS AND LIMITATIONS SPECIFIED IN THIS SECTION 12

WILL SURVIVE AND APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

11. ARBITRATION, DISPUTES, AND CHOICE OF LAW

A. If you are a resident of the United States or Canada:

- i. EXCEPT FOR EXCLUDED CLAIMS: ANY CLAIM, CAUSE OF ACTION, REQUEST FOR RELIEF OR DISPUTE THAT MIGHT ARISE BETWEEN YOU AND ProPal (“**CLAIMS**”) MUST BE RESOLVED BY ARBITRATION ON AN INDIVIDUAL BASIS; YOU AND WE AGREE THAT EACH MAY BRING OR PARTICIPATE IN CLAIMS AGAINST THE OTHER ONLY IN OUR RESPECTIVE INDIVIDUAL CAPACITIES, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. UNLESS BOTH YOU AND ProPal AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN THE CLAIMS OF OTHER PERSONS OR PARTIES WHO MAY BE SIMILARLY SITUATED, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING. YOU AND ProPal EXPRESSLY WAIVE THE RIGHT TO TRIAL BY A JURY.
- ii. “**Excluded Claims**” means: (a) Claims brought by you or ProPal that could be brought in small claims court, if permitted by the rules of that court, or (b) Claims related to intellectual property (like copyrights and trademarks), violations of ProPal’s API Terms of Use (which, for clarity, are governed by those terms), or a breach of Section 7 above (Representations and Warranties). Excluded Claims may be brought in court. Any issues relating to the scope and enforceability of the arbitration provision will be resolved by the arbitrator. If any Claim cannot be arbitrated in accordance with this provision, then only that Claim may be brought in court and all other Claims remain subject to arbitration. Notwithstanding this paragraph, Business Claims, as defined in Section 3 of the Additional Terms for Business Accounts, are governed by that section.
- iii. Excluded Claims and Claims that cannot be arbitrated must be brought in court. California law will govern these Terms (to the extent not preempted or inconsistent with

federal law), as well as any such Excluded Claim or Claim that cannot be arbitrated, without regard to conflict of law provisions. You or ProPal may seek relief in any small claims court of competent jurisdiction. All other Excluded Claims and Claims that cannot be arbitrated are subject to the exclusive jurisdiction in, and the exclusive venue of, the state and federal courts located within San Francisco County, California and you consent to the personal jurisdiction of these courts for the purpose of litigating any such Claim.

- iv. Arbitration shall be administered by the American Arbitration Association (“AAA”) in accordance with its [Consumer Arbitration Rules](#) then in effect. For more information, visit www.adr.org. Arbitration may be conducted in person, through the submission of documents, by phone or online. The arbitrator may award damages to you individually as a court could, including declaratory or injunctive relief, but only to the extent required to satisfy your individual claim.
- v. Unless the arbitrator finds the arbitration was frivolous or brought for an improper purpose, ProPal will pay all filing, AAA, and arbitrator’s fees and expenses. We waive any right to seek an award of attorneys’ fees and expenses in connection with any non-frivolous arbitration between you and us.

12. TERMINATION

- A. You may terminate the Terms at any time by closing your Account, discontinuing any access to or use of the Service.
- B. We may close your Account, suspend your ability to use certain portions of the Service, terminate any license or permission granted to you hereunder, and/or ban you altogether from the Service for any or no reason, and without notice or liability of any kind. Any such action could prevent you from accessing your Account, the Service, Your Content, Service Content, or any other related information.

13. GENERAL TERMS

- A. We reserve the right to modify, update, or discontinue the Service at our sole discretion, at any time, for any or no reason, and without notice or liability.
- B. The Terms contain the entire agreement between you and us regarding the use of the Service, and supersede any prior agreement between you and us on such subject matter. The parties

acknowledge that no reliance is placed on any representation made but not expressly contained in these Terms.

- C. Any failure on ProPal's part to exercise or enforce any right or provision of the Terms does not constitute a waiver of such right or provision. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder. The Terms may not be waived, except pursuant to a writing executed by ProPal.
- D. If any provision of the Terms is found to be unenforceable or invalid by an arbitrator or court of competent jurisdiction, then only that provision shall be modified to reflect the parties' intention or eliminated to the minimum extent necessary so that the Terms shall otherwise remain in full force and effect and enforceable.
- E. The Terms, and any rights or obligations hereunder, are not assignable, transferable or sublicensable by you except with ProPal's prior written consent, but may be assigned or transferred by us without restriction. Any attempted assignment by you shall violate these Terms and be void.
- F. You agree that no joint venture, partnership, employment, agency, special or fiduciary relationship exists between you and ProPal as a result of these Terms or your use of the Service.
- G. The section titles in the Terms are for convenience only and have no legal or contractual effect.