

# Realty PA – Terms of Service



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## 1. Introduction

1.1. These are the general terms of our relationship with you. They cover any transactions where we provide services to you. Under these terms:

- **we** are the service provider – RealtyPA (Pty) Ltd (2022/230374/07, also known as RealtyPA; and
- **you** are the customer, a user, a real estate agent or agency or any other party identified in more detail on the order or quote.

For the terms that govern your general use of the App and website, please see our [Terms of Use](#). For our terms on the use of personal information, please see our [Privacy Policy](#).

1.2. An order is a separate document or form that contains the commercial terms of each specific transaction and incorporates these terms. The commercial terms set out in the order will, for the avoidance of any doubt, comprise of us providing you a real-estate-specific all-in-one tool to help you manage your business with the use of custom-built cloud-based software, APIs and a cross-platform User Interface (UI) for keeping track of leads, clients and properties. This will include the specific features listed below.

1.2.1. **Contacts.** Agents can:

- add and save all clients, attorneys, bond originators, colleagues, contractors, companies, trusts, personal contacts and others on the app;
- link contacts to other contacts and properties;
- share contacts between colleagues;
- store notes, create tasks, upload and store files, and birthday reminders, upload POPIA consents and store FICA documents;
- keep track of contacts' purchasing and rental requirements;
- retrieve contact details from the credit bureau; and
- keep track of all communication activity and history.

1.2.2. **Properties.** Agents can:

- add and store potential and existing listings, pending deals, past sales or rentals, inactive or lost sales or rentals, and referrals.
- retrieve deed information for over nine million properties within South Africa through quick search function, by address search, by street name, by sectional title name, by owner ID or map search.
- link properties to any contact/s.
- create valuations, mandates and agreements on the app.
- upload property images and files relating to property, add notes and create tasks.
- Record property specifications such as the number of bedrooms, bathrooms, garages or parkings; and

- keep track of any activity relating to property.

## 2. Agreement

2.1. **Composition.** The agreement consists of these terms of service and any orders or any other specific terms applicable to the services.

2.2. **Definitions.** In the agreement:

**business day** means any day other than a Saturday, Sunday, or holiday (including a public or bank holiday) in the jurisdiction where we are organised;

**business hours** means our normal business hours (09h00 am to 17h00) on business days;

**day** means a day counted from midnight to midnight, including all days of the month, Saturdays, Sundays, and public holidays;

**Protection of Personal Information Act (POPIA)** means South Africa's data protection law, which applies to these terms and our relationship with you;

**sign** means the handwritten signature or an electronic signature that the parties agree to use, of each of the parties' duly authorised representatives;

**we, us, or our** means RealtyPA;

**writing** means the reproduction of information or data in physical form or any mode of reproducing information or data in electronic form that the parties agree to use, but excludes information or data in the form of email; and

**you, or your** means the customer as identified in more detail on the order or quote.

2.3. **Interpretation.** The following rules apply to the interpretation of the agreement:

- **reference headings** – clause and subclause headings are for reference only and do not affect interpretation;
- **non-exhaustive lists** – whenever a clause lists specific examples or items following a listing word, such as 'including', 'includes', 'excluding', or 'excludes', they will not limit its scope;
- **undefined words or phrases** – all words or phrases that the agreement not define have their ordinary English meaning;
- **enactment references** – references to any enactment include it as re-enacted, amended, or extended;
- **person references** – references to a person includes a natural and juristic person;
- **party references** – references to a party includes their successors or permitted assigns;
- **number of days** – when any number of days is prescribed, the first day will be excluded and the last day included;
- **no interpretation against the draftsman** – the rule of construction that an agreement must be interpreted against the party responsible for its drafting or preparation does not apply; and
- **time calculations** – the parties will use GMT +2 to calculate any times.

2.4. **Departure.** These terms apply to all our customers and are not generally open to negotiation for reasons of consistency. Should the parties negotiate any departure from these terms, they will record that departure in the relevant order or other specific terms.

2.5. **Conflict.** If there is a conflict of meaning between these terms and any word or phrase in an order or other specific terms, the meaning in the order or specific terms will prevail in respect of the relevant services.

### 3. Duration

- 3.1. **Commencement.** These terms start whenever you accept them by:
- **doing so explicitly** – such as by checking a checkbox saying that you do or agreeing to an order that incorporates them by reference;
  - **using the services in any way** – such as by accessing them; or
  - exercising any rights granted to you under the agreement;
- and continue until terminated.

3.2. **Automatic renewal.** If an order involves a subscription, the agreement will continue automatically from the end of the initial term or subsequent automatic renewal period for an automatic renewal period equivalent to the initial term.

3.3. **Renewal termination.** Either party may terminate the agreement before the end of the initial term or subsequent automatic renewal period by giving the other party at least 30 calendar days prior written notice.

### 4. Orders

4.1. **Placing orders.** You place orders with us whenever you order or start using the services through the website or application. These orders are offers to us to buy our services.

4.2. **Capacity and authority.** You promise that you have the legal capacity and authority to enter into the agreement.

4.3. **Invitation to do business.** Marketing is merely an invitation to do business and we only conclude the agreement when we actually provide the services to you. This happens when we accept your offer.

4.4. **Cancellations.** We may cancel any order, but we will refund any money you have paid in relation to that particular order if we do.

4.5. **Time and place.** We conclude the agreement when we accept the order and where we are domiciled when we do.

4.6. **Separate agreements.** Each order is a separate agreement, but you are deemed to have breached all of them if you breach one of them.

### 5. Services

- 5.1. **Right.** We grant you a right to use the services subject to the following limitations:
- **duration of agreement** – you may only use the services for the duration of the agreement;
  - **limited to terms** – you may only use the services according to these terms;
  - **non-exclusive** – we may allow anyone else to use the services;
  - **non-transferable** – you may not transfer the right to anyone else. Your right may, therefore, only be used by one user. Unless the order or quote states otherwise, if you have more offices in various locations, each office will be required to sign up or order the services separately; and
  - **specified purposes** – you may only use the services for the specified purposes that we've communicated to you in writing from time to time.

5.2. **Breach.** We may cancel your right if you breach the agreement.

### 6. Online services

- 6.1. **Basis.** We provide the online services to you on the following basis:
- you give us permission to monitor how you use them for security and stability purposes; and

- you agree that our records are undisputed evidence of the services provided to you.

- 6.2. Access conditions.** We will only provide online service access to you or your authorised users (where you are a juristic person) on the conditions that you or each one of them will:
- accurately and completely provide us with any information that we ask for on registration or account creation;
  - create or have the necessary credentials (such as a username and password) assigned to them on registration or account creation;
  - look after or secure their credentials and not give them to anyone else;
  - not interfere with or introduce any malicious software into the online services or otherwise misuse them;
  - be responsible for any activity that happens under their account, even if someone else was actually acting under their credentials;
  - have the necessary infrastructure, equipment, and software to access the online services; and
  - abide by the agreement and any policies that we communicate to them in writing.

- 6.3. Availability or errors.** We will do our best to make the online services available at all times and prevent or minimise errors, however we cannot guarantee that they will always be available. We may make them unavailable for scheduled and emergency maintenance.

- 6.4. Free support.** We will provide free support via whatsapp chat during business hours. You will use the contact details specified in the order or quote to access such support. Any support beyond this free support may be subject to us quoting you at our going rates. Support will also be subject to any changes we specify in the order, including the duration of the support, and any fees we may charge for the support.

- 6.5. Number of users.** The cost of the services will be based on the number of users you have at any one time. If you have users that fall under the user ranges or bands set out in the table below, you will pay the fees related to that band or range, which will be set out in an order or quote.

Numbers of users	Cost
1 to 10 users	Set out in the order or quote
11 to 50 users	Set out in the order or quote
51 to 100 users	Set out in the order or quote
101 and more users	Set out in the order or quote

- 6.6. Whatsapp notifications.** There will be a limit to the number of Whatsapp notifications that you will receive on your phone as part of the services. You may purchase more Whatsapps from us at our then going rates. The number of Whatsapps you have will be set out in the order or quote.

- 6.7. Storage limit.** There will be a limit on the amount of storage that you may use as part of the services when you download or access files. You may purchase more storage from us at our then going rates. The amount of storage you have will be set out in the order or quote.

6.8.

## 7. Your data and other data

- 7.1. Definition.** Your data is any data belonging to you, your customer, or other third parties (such as bond and transfer attorneys) that:

- you (or any third party on your behalf) provide to us; or
- we generate, process, or supply to you in providing the services;

but excludes any derived data that we create for our own purposes or which is proprietary or confidential to us or our third party contractors.

Other parties' data. This is data that we give you access to as part of providing you the services, and comprises, mainly, of the data of leads you may wish to engage with (such as property owners you may wish to contact in relation to property valuations and sales).

- 7.2. You own it.** You own all your data but give us a right to use it to provide the services when you provide us with access to it.
- 7.3. We do not own it.** We do not own any of your data. However, we do own our derived data. Your data does not include any derived data that we create for our own internal purposes. Derived data is any of our own data that we create from your data, such as through aggregation, de-identification, or anonymisation.
- 7.4. Responsibility.** We take the protection of your data and other parties' data very seriously and will always do everything in our power to protect it. You acknowledge, however, that unless POPIA (or any other applicable law) provides otherwise, we are not the responsible party for any of your data stored on the online services, and you will remain the responsible party. You indemnify us against any liability for data breaches, unauthorised access, and third party claims to the extent allowed by POPIA or any applicable law. To the extent that your data and other parties' data will be involved in us providing the services, you will
- comply with all relevant laws, including POPIA;
  - comply with our Privacy Policy and any of your policies or procedures relating to your data;
  - have due regard to leading industry information security management codes of practice, where appropriate;
  - have an individual to oversee compliance with relevant data protection laws, including appointing an information officer;
  - not sell, dispose of, or encumber any of your data and other parties' data or try to do any of those things in a manner that is inconsistent with POPIA;
  - be able to identify any of your data separately from any other data under our control; and
  - not disclose any personal information from your data, other than in terms of the agreement.
- 7.5. Other parties' data.** You acknowledge that while our provision of the services may grant you access to other parties' data for business or direct marketing purposes, you will use this data responsibly and will specifically do the following:
- afford every lead an opportunity to opt in to being marketed to;
  - keep a register of leads who have opted in and those who have opted out;
  - not repeatedly contact a person who has indicated that they do not opt in to being marketed to; or
  - not share the contact details of a person who has indicated that they do not opt in, with other areas of your business or third parties.
- 7.6. Subcontracting.** Subcontracting involves engaging a subcontractor outside our organisation to do work as part of providing the services. We may subcontract work involving your data, provided that we:
- we get your written permission to do so beforehand;
  - notify you in writing of: (i) the purpose of sharing your data with the subcontractor; and (ii) how we have carried out due diligence on them;
  - do so only through a written agreement with the subcontractor which imposes the same obligations on them as are imposed on us; and
  - remain fully liable for any processing of your data under the agreement by our subcontractor.
- 7.7. Location.** You consent to us transferring your data to our associated companies, service providers, or agents who may be located in other countries for the purpose of providing the services.

## 8. Confidential information

- 8.1. **Definition.** Confidential information is any information that the parties share with one another in terms of this agreement with the intention that the other party should keep it secret, such as personal information, business records, or customer details.
- 8.2. **Responsibilities.** Each party will keep any confidential information it receives from the other party under the agreement confidential and the receiving party will:
- protect the other party's interests;
  - only use it to comply with their responsibilities under the agreement;
  - only give it to their employees or agents that need it (and only as much as they need);
  - use reasonable security procedures to make sure their employees or agents keep it confidential;
  - get promises of confidentiality from those employees or agents who need access to the information;
  - not reveal the information to anyone else; and
  - not use it for any purpose other than under this agreement.
- 8.3. **End of agreement.** The parties will give back to the other all confidential information of the other that they have at the end of the agreement, unless:
- the other party agrees that they may destroy or retain it instead; or
  - it is lawfully in the public domain;
  - someone else who is allowed to reveal it gives it to them;
  - someone gives it to them to comply with a court order or other legal duty.
- 8.4. **Indemnity.** Each party indemnifies the other against any loss or damage that the other may suffer because of a breach of this clause by a party or its employees or agents.
- 8.5. **Survival.** This clause about confidential information is separate from the rest of this agreement and remains valid for five years after the end of this agreement.

## 9. Loss or breach of data or unauthorised use of the App

- 9.1. If you become aware or have any reason to believe that your data or our data is lost, breached or otherwise accessed by an unauthorised party, you will immediately inform us in writing. You acknowledge that a loss of data or breach includes the loss or theft of devices (such as laptops and cell phones) that you use to access your data or our data in connection with the services.
- 9.2. You will also immediately inform us when you become aware of any unauthorised use of the App or the website.
- 9.3. You will make yourself available to consult with us should we need your assistance with any corrective or protective measures that we, in our discretion, elect to take to fix or respond to a breach or loss of data.

## 10. Intellectual property

- 10.1. **Ownership.** We or our third-party licensors own all proprietary rights in our services and we or they may prosecute you for any violations of those rights.
- 10.2. **Our technology.** Our technology is anything that we have or acquire rights in and may use to perform our obligations under the agreement.
- 10.3. **Retention of rights.** We own all intellectual property rights in our technology (including the App and the website) and you may not use those rights without our permission. You do not acquire any rights in our technology if we use it to provide services to you.
- 10.4. **Our trademarks.** Our trademarks are our property and you may not use them without our permission. All

other trademarks are their respective owners' property.

**10.5. Restrictions.** You may not change, hire out, reverse engineer, or copy the services, any aspect of the App or the website, without our permission.

**10.6. Your intellectual property.** You grant us a non-exclusive and royalty-free licence to use any of your trademarks and copyright works which you deliver to us for the purposes of providing the services. We may not use them for any other purpose without your prior written permission. The licence expires automatically when the agreement ends. You retain all rights in your trademarks and copyright works despite this licence.

## 11. Non-solicitation

You will not contract with any of our personnel, other than through us, who were involved in providing services under an order for the duration of that order or for 12 calendar months after its termination.

## 12. Fees and payment

**12.1. Payment.** You will pay us the fees on the due date and in the manner set out in the order or quote we will provide you, including any invoice that results from an order or quote. For the avoidance of any doubt, where there is no payment due date, you will pay us any fees no later than 30 days from the date of an invoice or the date you accept to place any order. You may not withhold payment of any amount due to us for any reason.

**12.2. Late payments.** Additional charges agreed between the parties in writing apply to any payment we receive after the due date and you must pay them to us on demand. We may stop providing any services and suspend your access to the App or website until you have paid all amounts due.

**12.3. Interest.** Overdue amounts on any outstanding invoice will bear interest for our benefit from its due date until you pay it at whichever rate is higher between:

- 2% above the prime (or prime lending) rate; or
- 15%.

Interest will be payable on a claim for damages from when the damages were suffered.

**12.4. Appropriation.** We may use any money you pay us to settle your indebtedness under the agreement, despite any particular reason you may have paid it to us.

**12.5. Certificate.** We may appoint an accountant to sign a certificate that will be proof of the amount due by you and the date on which it is payable.

**12.6. Tax.** All fees exclude any tax (unless indicated otherwise), which you will pay where applicable in addition to the fees.

**12.7. Payment profile.** We may provide any registered credit bureau with information about your payment of amounts.

## 13. Our warranties

**13.1. Service warranties.** We warrant that we will:

- employ enough trained personnel with the knowledge and expertise to provide the services;
- use reasonable efforts consistent with prevailing industry standards to maintain the services; and
- provide the services in accordance with all applicable laws.

**13.2. General warranties.** We warrant further that we:

- have the legal right and authority to perform our obligations under the agreement; and

- will not knowingly introduce any malicious software into your systems.

## 14. Disclaimer of warranties

- 14.1. **Disclaimer.** You use the services at your own risk and we disclaim all other warranties to the extent allowed by applicable law. We are not liable for any defect that you cause.
- 14.2. **Exclusion of liability.** Despite our warranties, we are not liable for any defects that your negligence, failure to follow our instructions, or misuse causes.

## 15. Your warranties

- 15.1. **Agreement warranties.** You warrant that:
- no one has induced you to enter into the agreement by any prior representations, warranties, or guarantees; and
  - you are not breaching any other agreement by entering into the agreement.
- 15.2. **Indemnity.** You indemnify us against any claim for damages by any third party resulting from a breach of your warranties, including all legal costs. Legal costs means the costs that a lawyer may recover from their client for their disbursements and professional services if permissible under applicable law.

## 16. Limitation of liability

- 16.1. **Direct damages limited.** We are only liable to you for any direct damages that the services may cause up to the total amount of fees that you have already paid us for them.
- 16.2. **Indirect damages excluded.** We are not liable for any other damages or losses that the services may cause you.
- 16.3. **Your default.** We are not liable for any damage or loss that your breach, misrepresentation, or mistake causes. This includes loss that you may suffer as a result of providing incorrect or incomplete information or using the services in an incorrect or otherwise unauthorised manner.

## 17. Breach and termination

- 17.1. **Breach.** If either party
- does not fix a breach within seven days of receiving written notice from the other party;
  - breaches the agreement materially twice or more in six months;
  - is bankrupt or has some legal disability;
  - takes steps to or is closed down (such as becoming insolvent or entering sequestration);
  - makes any settlement or arrangement with their creditors; or
  - fails to pay a court order against themselves for a significant amount within 21 days;
- then the other party may:
- make the party comply with the agreement; or
  - immediately cancel the agreement in writing and claim damages from the other party, including fees already due.
- 17.2. **Suspension.** We may immediately suspend your right to use the services if:
- you try to gain unauthorised access to them;
  - we decide that your use poses a security threat to us or another user other than you;
  - there is evidence of fraud on your account; or



- we believe you are using them for an illegal purpose or in a way that infringes a third party's rights, including your unlawful use of personal information in violation of POPIA.

## 18. Termination

18.1. **Termination for good cause.** We may need to terminate the agreement immediately if:

- we discontinue or stop providing the services;
- believe providing the services could burden or pose a risk to us;
- have to terminate to comply with a law; or
- determine that providing the services has become impractical.

If we need to terminate, we will give you as much notice as reasonably possible in writing.

18.2. **Termination for convenience.** You may terminate the agreement or a specific order on at least 60 days written notice to us.

18.3. **Duties on termination.** We will stop providing the services, you will no longer be able to access them, and we may erase your data on termination, cancellation, or expiry of the agreement.

## 19. Effect of termination

19.1. **Acceleration.** All amounts due to us for the services become due and payable on termination, cancellation, or expiry the agreement.

19.2. **Assistance.** We may provide you with post termination assistance (such as data retrieval) subject to additional fees and conditions, but are not obliged to.

19.3. **No expectation.** The agreement does not create any expectation of continued service, agreement renewal, or any further agreement between the parties.

## 20. General

20.1. **Resolving disputes.** Either party may inform the other in writing if there is a dispute. The parties must first try to negotiate to end the dispute, then enter into mediation if negotiation fails, and finally go to arbitration if mediation fails. If they go to arbitration, they will agree in writing on a recognized and appropriate forum for arbitration that is accessible to both parties.

20.2. **Notices and domicile.** The parties will send all notices to each other's' email addresses and choose their respective street addresses as their service addresses for all legal documents. Our email and street addresses are available on our website, while you provide your email and street addresses to us when concluding the agreement. The parties may change either address on 14 calendar days written notice to the other.

20.3. **Beyond human control.** Neither party is responsible for breach of the agreement caused by circumstances beyond human control, but the other party may cancel the agreement on written notice to the other if the circumstances persist for more than 60 calendar days.

20.4. **Assignment.** You may not assign the agreement to anyone. We may assign it to any successor or purchaser of our business or some of our assets.

20.5. **Relationship.** The agreement does not create an employment relationship between the parties.

20.6. **Entire agreement.** The agreement is the entire agreement between the parties on the subject.

20.7. **Changes.** We will notify you of any changes to the agreement by email or Whatsapp. Those changes will only apply to future services orders. If you do not agree with the changes, you must stop using the services. If you continue to use the services following notification of a change, the changed terms will

apply to you and you will be deemed to have accepted them.

- 20.8. Waiver.** Any favour we may allow you will not affect any of our rights against you.
- 20.9. Severability.** Any term that is invalid, unenforceable, or illegal may be removed from the agreement without affecting the rest of it.
- 20.10. Governing law.** South African law governs this agreement.
- 20.11. Mediation.** If negotiation fails, the parties must refer the dispute to mediation under AFSA's rules. AFSA means the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead).
- 20.12. Arbitration.** If mediation fails, the parties must refer the dispute within 15 business days to arbitration (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations. The arbitration will be held in English in Johannesburg. The parties will agree and appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 business days after the referral, the Secretariat of AFSA will appoint the arbitrator.
- 20.13. Jurisdiction.** You consent to the jurisdiction of the Magistrate's Court in respect of any action or proceedings that we may bring against you in connection with this agreement, even if the action or proceedings would otherwise be beyond its jurisdiction without prejudice to our right to institute any action in any other court having jurisdiction.