

# Schedule of Services and Charges

## Terms and Conditions

### 1 Term

1.1 This Agreement shall commence upon the acceptance by Tri-Search of the User's Licence Agreement and, subject to these terms and conditions.

1.2 Tri-Search may from time to time vary the conditions of this Agreement (including the prices at which the Service is to be provided) by giving written notice of such variation to the User.

### 2 Termination

2.1 Tri-Search may, subject to providing seven (7) days written notice to the User (during which time the User may remedy any breach), terminate this Agreement and deny the User access to the Service if the User is in breach of any of the conditions herein or if the User commits any act of bankruptcy or makes any composition or arrangement with its creditors or a receiver or manager is appointed over any part of its undertaking or its assets or it goes into liquidation or any petition is presented for its winding up.

### 3 Payments, Charges and GST

3.1 All charges are payable net thirty days from date of invoice, or as otherwise specified by Tri-Search at its discretion. If the User defaults in payment, Tri-Search reserves the right, without notice, to suspend access to the Service pending payment and if payment is not made within 14 days of the due date, to terminate this Agreement without notice. The User acknowledges that all charges are incurred by the User are incurred as a principal and not as agent for any other party and agrees to pay all charges by the due date. In the event of a debt being handed over to a collections agency, you will be liable for all the legal costs associated with the collection of this debt. This is an essential term of this Agreement.

3.2.1 (a) In this clause 3 the expressions "adjustment note", "consideration", "GST", "supply", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.

(b) For the avoidance of doubt, "GST" includes any penalties or additional tax imposed in relation to the GST.

3.2.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this document are exclusive of GST. The User must pay GST on the supply of the Services and Tri-Search will supply a tax invoice for its Services.

3.2.3 (a) Despite any other provision in this document, if GST is imposed on

any supply made under this document, the recipient must pay to the supplier an amount equal to the GST payable on the supply.

3.3 Tri-Search reserves the right to retain service fees where a search result is cancelled or the search result is NIL. Each refund is assessed based on its own merits and requires the relevant Authority to refund the applicable charges.

### 4 Liability

4.1 Tri-Search grants the User access to the Service on the basis that Tri-Search is not engaged in rendering legal or other professional services.

4.2 Tri-Search shall not be liable to the User in negligence or otherwise in respect of anything done or omitted to be done by the User in reliance in whole or in part on the Service including any assistance or demonstration provided to the User by Tri-Search and Tri-Search's liability to the User shall in any event be limited to the amount of the fees charged for the particular service to which such liability relates.

4.3 To the extent that Clause 4.2 is rendered void or unenforceable by any relevant law Tri-Search's liability to the User is limited to either (at Tri-Search's discretion) the supplying of the service again or the payment of the cost of having the service supplied again.

4.4 Tri-Search does not warrant the accuracy or timeliness of searches provided by any government department or agency or other third party provider, and shall not be liable to the User or any third party for any delay, error or inaccuracy in any search or information supplied by any government department or agency or other third party provider or from any error or inaccuracy caused by communicating via the internet.

4.5 The User acknowledges certain government departments or agencies impose terms and conditions and limitations of liability in respect of the obtaining and use of information and searches from those departments and agencies. The User agrees to comply with the terms and conditions of supply and use imposed by any relevant government departments and agencies from time to time, including those which are extracted in Attachment "A" hereto.

### 5 Force Majeure

Tri-Search shall not be liable for any delay, loss or damage (including consequential loss) caused to the User directly or indirectly by the unavailability of access to the Service caused by the failure of the User to comply with this Agreement, power or mechanical failure howsoever caused, delays or failures in telecommunication systems or in the transmission of information via the internet or any cause whatsoever outside the control of Tri-Search.

### 6 Users, password and user manuals

6.1 Tri-Search shall issue the User with a User ID and Password allowing access to the Services. The User is responsible for the acts of its own employees and contractors and, without limitation must ensure that it protects the secrecy of any passwords issued to the User and controls the use of the Services by its employees and contractors. The User is responsible for all charges incurred on the User's account and the use of a password issued by Tri-Search to the User is prima facie evidence of the User's authority to order the Services. Where the User requests in writing that Tri-Search cancel a particular password or account, Tri-Search shall cancel that password or account as soon as practicable in normal business hours following receipt of that request.

### 7 Additional Services

In introducing any additional services Tri-Search may add to or vary the conditions of this Agreement as they apply to those additional services by notification on-screen or by written notice to the User. Usage of the additional services by the User shall be taken as agreement by the User to be bound by the conditions so displayed or notified.

### 8 Assignment and Notices

Tri-Search may by notice in writing to the User assign the benefits and obligations of this Agreement. Users may only assign this Agreement with the consent in writing of Tri-Search.

### 9 Exclusion of implied terms and jurisdiction

This Agreement and the Schedules attached to or referred to herein constitute the entire agreement between the parties in respect of the Services and supersede all other negotiations, agreements or understandings whether written or oral relating to the supply the Services and the other services provided under this agreement. All implied terms are hereby excluded, to the full extent permitted by law. This Agreement is made in New South Wales and is governed by the laws of New South Wales.

### 10 Privacy and Data Security

Tri-Search complies with the Privacy Act 1988 in respect of personal information and will not use or disclose any personal information received from the User or its clients except as is necessary for the purposes of providing its services or related purposes such as invoicing, providing customer support, training, record maintenance or statistical purposes or as otherwise required by law. While Tri-Search takes reasonable precautions to prevent unauthorised access to or use of personal information and confidential information, the use of electronic communications and electronic data storage system means that there remains a possibility that such information may be accessed by unauthorised persons. The User warrants that it has all authorities and consents to necessary to disclose any personal information it supplies to Tri-Search.

## Attachment A

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#### EXTRACT OF TERMS AND CONDITIONS IMPOSED BY VARIOUS GOVERNMENT DEPARTMENTS AND AGENCIES

##### 1.1 Department of Natural Resources and Mines

###### Definitions

**Direct Marketing** means one to one marketing, normally supported by a database, which uses one or more advertising media to effect a measurable response and or transaction from a person (including a corporation or organisation) and includes but is not limited to, telemarketing, bulk e-mail messaging (spam), postal canvassing and list broking.

**Licensed Data** means data that is owned by or licensed to the State of Queensland (Department of Natural Resources and Mines) and licensed to others under agreements.

**Licensed Data Product** means any Value Added product derived from or based on the Licensed Data or any Licensed Data Product. Value Adding means any augmenting, repackaging or incorporating of the Licensee's data, or other data licensed to the Licensee, with the Licensed Data. Conversion of the Licensed Data onto different media or the translation into a different format is not Value Adding.

**Hardcopy Product** means any printed paper based (not in electronic form) Licensed Data Product.

###### Ownership

I acknowledge that I have no rights of ownership in the Licensed Data and all Intellectual Property Rights including copyright in the Licensed Data are retained by the State of Queensland (Department of Natural Resources and Mines).

###### Liability

I acknowledge that the State of Queensland (Department of Natural Resources and Mines) or the Licensee does not guarantee the accuracy or completeness of the Licensed Data and does not make any warranty about the Licensed Data.

I agree that the State of Queensland (Department of Natural Resources and Mines) or the Licensee is not under any liability to me for any loss or damage (including consequential Loss or damage) from my use of the Licensed Data Products.

###### Privacy

I agree that I will not use the Licensed Data or Licensed Data Products with the intention of encroaching on the privacy of an individual and I will comply with the Privacy Laws.

I agree that I will not use the Licensed Data or Licensed Data Products for Direct Marketing.

###### Copyright and Disclaimer

I agree to display the applicable copyright notice and disclaimer notice.

All reproductions of the Licensed Data, however altered, reformatted or redisplayed, must bear the following notice:

© The State of Queensland (Department of Natural Resources and Mines)

All Licensed Data Products must bear the following notice and must refer to the relevant data in the Licensed Data Products:

Based on Data provided with the permission of the Department of Natural Resources and Mines.

All reproductions of the Licensed Data or Licensed Data Products must bear the following notice:

The Department of Natural Resources and Mines makes no representation or warranties about accuracy, reliability, completeness or suitability of the data for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which might be incurred as a result of the data being inaccurate or incomplete in any way and for any reason.

##### 1.2 Australian Securities and Investments Commission ("ASIC")

The User acknowledges that;

- The search extracts contained in the ASIC System and ASIC Registers are based on information provided to ASIC by third parties.
- ASIC has not verified the accuracy, currency, reliability or completeness of the search extracts and makes no representation or warranty as to their accuracy, currency or reliability.
- ASIC will have no liability to any persons for any inaccuracy, omission, defect or error in the Test Database, ASIC System, ASIC Registers or Tri-Search's programs or data.

##### 1.3 Mirus Data (Person Locator)

The User acknowledges Mirus Data may be supplied by third parties and Tri-Search does not guarantee accuracy or validity of data. Provision of Mirus Data is an acceptance of terms and conditions and compliance with Privacy Legislation.

##### 1.4 Australian Financial Security Authority ("AFSA")

User acknowledges that the National Personal Insolvency Index ("NPII") maintained by AFSA may contain errors and that Tri-Search shall not be liable for any inaccuracy in the NPII.

##### 1.5 NSW Land Registry Services ("NSW LRS")

Conditions of use:

Users are prohibited from:

Using the Property Information other than for their own business purposes On-selling, sub-licensing, disclosing or otherwise providing Property Information in any form to any other person. Altering the format, meaning or substance of any Property Information supplied Printing Property Information on paper other than plain or preprinted paper, which includes a Proprietary Notice. \*

Making copies of the Property Information other than as are reasonably required for backup purposes, provided that such copies include a Proprietary Notice \* and are secured so as not to be accessed or used by unauthorised persons or for any purpose other than backup.

\* Proprietary Notice means a notice on material in which LRS claims rights, title or ownership, and appears as "© Office of the Registrar-General (year)".

##### 1.6 Landata, VIC Land Registry ("Landata")

###### 1. Definitions and Interpretations

These terms are in conjunction with the agreement between InfoTrack and LANDATA® for the provision of services to Tri-Search as a Third Party of InfoTrack, and the following definitions apply:

**Authorised Purposes** means:

- Dealings with interests in land authorised by Law;
- A purpose directly related to such dealing provided that the purpose is not contrary to any Law; or
- An enquiry relating to land or the ownership of land recorded in the Register provided that the enquiry or the purpose of enquiry is not contrary to Law;

but does not mean:

- data aggregation, data matching, data analysis or data mining (whether through manual analysis or automated "big data" type analysis), direct marketing, compilation, updating or verification of mailing lists, list brokering of the Licensed Material or any related purpose except to the extent that such activity is required by Law (including any obligation under a court order);

**Crown Land Status Information** means information in relation to Crown land that may include land description, whether and for what purposes it is reserved and reference to related instruments;

**Land Index** means the electronic cross reference table listing registered proprietors, title particulars, parcel and property identifiers of properties located in the State of Victoria maintained by the State;

**LANDATA® System** means the computerised system, operated by or on behalf of or under licence from the State, and as varied from time to time, which currently provides access to the Licensed Material;

**Law** means the requirements of all Acts of the Parliament of Victoria and of the Commonwealth of Australia and the requirements of all ordinances, regulations, by-laws, orders and proclamations made or issued under any such Acts or ordinances and with the lawful requirements of public and other authorities in any way affecting or applicable to this agreement;

**Licensed Material** means the data available and known as:

- Title Search Data and other information made available to the LANDATA® System by the Registrar of Titles including information about unregistered dealings;
- Searches of the Land Index;
- The Property Transaction Alert Service;
- Property Enquiry Data including planning and other property related certificates;
- Crown Land Information; and
- Any other data or information as notified in writing by LANDATA® and any update or new release of that material.

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**Licensed Material accessed through the Shell** consists of the data available and known as:

- (a) Title Search Data and other information made available to the LANDATA® System by the Registrar of Titles including information about unregistered dealings;
- (b) The Property Transaction Alert Service;
- (c) Property Enquiry Data including planning and other property related certificates
- (d) Crown Land Information; and
- (e) Any other data or information as notified in writing by LANDATA® and any update or new release of that material.

**Property Enquiry Data** means details obtained from various statutory bodies relating to a property in Victoria but excluding Title Search Data;

**Property Transaction Alert Service** means the service of providing alerts relating to property transactions including:

- (a) For specified folios of the Register – notice of lodgement of dealing(s);
- (b) For specified unregistered plans of subdivision – notice of the lodgement of the plan or other dealing(s) affecting the plan; and
- (c) For specified registered plans of subdivision – notice of the lodgement of dealing(s) affecting the registered proprietor of any lot in the plan of subdivision.

**Register** has the same meaning as is in section 4 of the *Transfer of Land Act 1958* (Vic);

**State** means the Crown in right of the State of Victoria;

**Title Search Data** means information consisting of the details of the Register including title particulars, final search, historical search, plans and lodged instruments;

2. The User is prohibited from:

- (a) Providing, on selling or distributing the Licensed Material in any format (including by way of online service) to any other party, unless the Licensed Material is provided for an Authorised Purpose;
- (b) Altering the format, meaning or substance of the Licensed Material;
- (c) Assembling or compiling, attempting to assemble or compile or directly or indirectly allowing or causing another person to assemble or compile or attempt to assemble or compile a database, directory or similar device which is similar in content, functionality or in any other respect to the Register or Land Index;
- (d) Extracting data from the Licensed Material, or directly or indirectly allowing or causing another person to extract data from the Licensed Material, using screen scraping, web scraping or any other similar data extraction techniques;
- (e) Using the information available from the Licensed Material for other than the Authorised Purposes.

3. The User must execute a Deed for LANDATA® Conditions of Use before Tri-Search is permitted to provide the User with access to the Land Index.

4. The User will not copy or reproduce any information derived from the Land Index and will take all reasonable precautions to prevent its employees, agents or contractors from accessing or copying the information so derived, unless:

- (a) A copy or reproduction is for an Authorised Purpose;
- (b) The State has approved in writing its copying or reproduction; or
- (c) All persons to which that part of the Land Index relates have given written consent to such copying or reproduction.

5. The User acknowledges and agrees that:

- (a) Copyright in all information from the Register is owned by the State or its licensors. No part of the Licensed Material supplied may be reproduced by any process except in accordance with the provisions of the *Copyright Act 1968* (Cth), pursuant to written agreement or to the extent required for the purpose of compliance with section 32 of the *Sale of Land Act 1962* (Vic);
- (b) The State does not warrant the accuracy or completeness of the Property Enquiry Data, the information in the Property Transaction Alert Service, the information in the Land Index or Crown Land Information or other information made available by the LANDATA® System other than Title Search Data and any person using or relying upon such information does so on the basis that the State bears no responsibility or liability whatsoever for any errors, faults, defects or omissions in the information; and

(c) The information from the Register is valid at the time and in the form obtained from the LANDATA® System only. The State accepts no responsibility for any subsequent release, publication or reproduction of the information from the Register. The State accepts no responsibility for information or data other than that which is part of the Register as provided for in the *Transfer of Land Act 1958* (Vic).

6. The User acknowledges that where a User has access to Property Enquiry Data, the User is responsible for the accuracy and completeness of the information submitted in each application and that if, due to the inaccurate or incomplete information which the User supplies:

- (a) There is an error in the Register search statement or property certificate sent to the User; or
- (b) The wrong Register search statement or property certificate is sent to the User,

the User is still responsible for the payment of the fees and charges for such certificate, as Tri-Search is still responsible for the payment of the fees and charges for such certificate under the terms of its Reseller Agreement with InfoTrack, and InfoTrack is still responsible for the payment of the fees and charges for such certificate under the terms of its agreement with LANDATA®.

7. The User consents to the collection and use of the information by the State through the LANDATA® System, which information is provided by the User when using the LANDATA® System. The information may be collected, used and disclosed by the State for all purposes associated with the use and operation of LANDATA®, the LANDATA® System and all related administration and operations of the State.

8. The User must maintain a record of all persons who are given access to the Licensed Material throughout the term of its Agreement with Tri-Search and for not less than 7 years from the date of termination or expiration of the agreement, except where the User is an Australian legal practitioner within the meaning of the Legal Profession Uniform Law, the User must maintain the record in accordance with the Legal Profession Uniform Law. The User is not required to maintain records of persons who are given access to the Licensed Material reproduced in a vendor statement received by that person (and which vendor statement was produced and disclosed in accordance with Law).

9. The User may only use the data stored for the purpose of the Enquiry for which it was originally made, or for an Authorised Purpose.

#### LANDGATE'S TERMS AND CONDITIONS FOR BROKER'S END USERS

##### 1. The End User:

- (a) May only use the Title Products for its own Internal Use;
- (b) Must do all things within its power to prevent the unauthorised use or disclosure of the Title Products and any related information;
- (d) Must do all things within its power to ensure the Title Products are only used for lawful purposes and in ways that are consistent with these (Landgate Suggested) terms and conditions, the Broker's Agreement, the TLA and the Land Information Authority Act 2006.
- (e) Must at its own cost, comply with all regulations, restrictions and conditions imposed by any legislation for the use of, access to, storage of or dealing with the Title Products. This includes, but is not limited to, the requirements of the Privacy Legislation.

##### 2. The End User must not:

- (a) Reproduce, supply, on-sell, sub-license, disclose or otherwise provide Title Products in any form to any other person;
- (b) Alter the format, meaning or substance of any Title Products supplied;
- (c) Alter or omit the meaning, substance, content, coordinates or spatial integrity of any Title Products;
- (d) Create data or other products which are the same as or substantially similar to the Title Products, or reverse engineer or rework the Title Products or by any means use any:
  - (i) outputs, whether or not from the Title Products; or
  - (ii) combination of data which includes the Title Products; or
  - (iii) permit any third party to do the same, except as permitted by law;
- (e) Derogate or detract from the legal rights of Landgate in the Title Products or any data derived from the Title Products
- (f) Display, distribute, sell, license, hire, let, trade or expose the Title Products for sale;
- (g) Keep a copy of any portion of the Title Products or any data derived from the Title Products;
- (h) Store any Title Products (or any part of them) in any form;

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(i) Not use or permit to be used, the logo of Landgate or any modification thereof, unless:

- (i) in accordance with these (Landgate Suggested) terms and conditions; or
- (ii) with the prior written consent of Landgate.

**3. End Users acknowledge that they use the Title Products at their own risk, from the time of delivery to them.**

**4. The End User must:**

(a) Have formal procedures in place to:

- (i) provide protection (eg Firewall) against intrusion and uncontrolled access to any Title Product, particularly through the Internet;
- (ii) prevent unauthorised access or downloading of Title Products; and
- (iii) ensure any Title Products are properly secured from interference when they are being transferred across the Internet.

(b) Ensure that its officers, employees, agents, contractors and third parties are made personally aware of and agree to comply with the security obligations contained in these (Landgate Suggested) terms and conditions, before providing them with access to any Title Product.

**5. The Parties acknowledge and agree that all Intellectual Property Rights in:**

- (a) the Title Products;
- (b) any data derived from the Title Products; and
- (c) any documentation provided by Landgate to the Broker for the purposes of supplying or providing Title Products to End Users; are the property of either Landgate or the State of Western Australia.

**6. The End User agrees to:**

- (a) comply with the requirements of the Privacy Legislation, particularly in relation to its handling of personal information, as defined in the same, including the collection, use, disclosure and security of such information, whether or not the End User is required by law to comply with the Privacy Legislation; and
- (b) comply with any other reasonable direction relating to privacy given by Landgate, including those relating to Landgate's own privacy policies and procedures; and
- (c) not to do anything which if done by Landgate would be a breach of the Privacy Legislation.

**7. Landgate (including its board members and employees) will not be responsible for any actions, claims, cost, proceedings, suits or demands whatsoever arising out of any breach of the Privacy Legislation by an End User or third person, in relation to any Title Product they obtain, or in relation to the Broker's Outputs. Furthermore:**

- (a) The End User must not use any Title Product for the purpose of Direct Marketing of goods or services.
- (b) The End User must not release the Title Products to any third party where that party intends to use those Title Products for the purpose of Direct Marketing of goods or services.
- (c) The End User must provide any assistance requested by Landgate in relation to an investigation of an allegation of misuse of any Title Product, or contravention of the Privacy Legislation.

**8. The End User agrees to only release publicity statements or any other form of advertisement or promotion that specifically refers to Landgate or Landgate's Land Information Products where:**

- (i) they have first been approved by Landgate's authorised delegate in writing (including by email), which approval will not be unreasonably withheld; and
- (ii) at least 24 hours written notice has been provided to Landgate prior to any such release;

**9. The End User acknowledges and agrees that, other than as expressly provided for in these (Landgate Suggested) terms and conditions, and to the extent permitted by law:**

- (a) No warranty, condition, description or representation is given by Landgate in relation to any documentation, services and/or software provided in conjunction with the Title Products, except for the Title Products themselves as provided under the TLA;
- (b) All representations, warranties, terms and conditions whether express or implied by use, statute or otherwise, in relation to the state, quality or fitness for purpose of any documentation, services and/or software provided in conjunction with the Title Products are excluded, except for those provided under the TLA for the Title Products themselves;
- (c) Landgate will not be liable to End Users for any loss or damage (including loss of profits, business, revenue or data), arising from or in connection with the supply of the Title Products, whether in contract, tort, negligence or otherwise, or in relation to:
  - (i) the performance of the Web Service;

(ii) any claim for infringement of intellectual property rights based on the modification, combination, operation or use of the Title Products with any computer programs, systems or data not furnished by Landgate;

(iii) the Broker's Outputs; or

(iv) anything except the Title Products provided under the TLA.

(d) Notwithstanding the preceding clause, Landgate's liability for any breach of terms implied by legislation which cannot be excluded, will be limited to the extent permitted by law and at the option of Landgate, to one or more of the ways permitted by section 68A(i) of the Trade Practices Act 1974 (Cth), at Landgate's option.

**10. If there is any inconsistency between:**

- (a) these (Landgate Suggested) End User terms and conditions; and
- (b) the remainder of the agreement between the Broker and the End User for the supply or provision of Title Products; these (Landgate Suggested) End User terms and conditions prevail to the extent of that inconsistency.

**11. DEFINITIONS**

**Broker's Agreement** means the means the head licence between the Broker and Landgate, or the document entitled the Landgate Title Products Broker Agreement 2009.

**Broker** means:

- the party who has been appointed by Landgate as its non-exclusive agent to carry on Landgate's Business for the term of the Broker's Agreement; and
- the party with whom the End User has entered into a contract to supply or provide Title Products.

**Broker's Outputs** means the Broker's own products and services which:

- are produced independently by the Broker; and
- are not part of Landgate's Business and not the subject of Landgate's agency arrangements; and
- supplement the Title Products, without altering their inherent nature or integrity; and

- will be supplied at a price determined entirely by the Broker.

Broker's Outputs may include the following products and services:

- Bundling or packaging together several Title Products; and/or
- Bundling or packaging the Title Products with other products from the Broker's business;
- Providing integrated web portals or web services;
- Providing advanced account management functions;
- Any other Broker product which incorporates a Title Product

**End User** means the Broker's or Sub-Broker's customer, member or subscriber, who has entered into an agreement with the Broker or Sub-Broker, for the supply or provision of Title Products. The term End User includes the officers, employees, servants, contractors and agents of the same. End Users may use Title Products for Internal Use only.

**Intellectual Property Rights** means all rights in and to any copyright, trademark, trading name, design, patent, know how (trade secrets) and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic field and any application or right to apply for registration of any of these rights and any right to protect or enforce any of these rights, as further specified in clause 26 of the Broker's Agreement.

**Internal Use** means use for an End User's:

- own business or internal purposes; or
- own clients or customers, where those clients will be the final recipient of the Title Products concerned and they will only use the Title Products concerned in relation to the singular purpose or transaction for which they were acquired.

**Landgate's Business** means to market, promote and sell Title Products, on behalf of Landgate to End Users.

**Privacy Legislation** means the Privacy Act 1988 (Cth) and any State privacy legislation which may be enacted during the Term.

**Title Product** is the generic term used to describe:

- any of the products which are supplied by Landgate to the Broker, as specified in the Broker's Agreement; or
- any of the other products described in the TLA Regulations, which Landgate may make available to Brokers through the Web Service from time to time.

**TLA** means the Transfer of Land Act 1893 (WA).

**Web Service** means the customised internet access to Landgate's computerised systems, including an online ordering service, which is provided by Landgate for the Broker.