

## Terms and Conditions

### 1. Definitions

**Agreement** means the Tri-Search terms and conditions and all schedules and annexures to it.

**Authorised Purposes** means a purpose directly related to the Service provided that that purpose is not contrary to Law but does not mean data aggregation, data matching, marketing, compilation or mailing lists, list brokering, or any related purpose except to the extent that such data aggregation, data matching, marketing, compilation or mailing lists, list brokering or the like is required under Law (including any obligation under a court order).

**Confidential Information** in relation to a party (Disclosing Party) means any information disclosed by the Disclosing Party to the other party (Receiving Party) under this Agreement that:

- (a) is by its nature confidential;
- (b) is designated by the Disclosing Party as confidential; or
- (c) the Receiving Party knows or ought to know is confidential, but does not include information that is:
- (d) in the public domain otherwise than as a result of a breach of this Agreement;
- (e) already known by the Receiving Party independently; or
- (f) independently developed or obtained by the Receiving Party without breach of this Agreement.

**GST Law** means the A New Tax System (Goods and Services Tax) Act 1999.

**Insolvency Event** in relation to a party means the occurrence of any of the following:

- (a) a receiver, receiver and manager, liquidator, provisional liquidator, administrator or trustee is appointed in respect of that party or any of its assets;
- (b) an application is made to court or a resolution is passed or an order is made for the winding up or dissolution of that party;
- (c) that party proposes or takes any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them; or
- (d) that party is declared or taken under any applicable law to be insolvent or that party's board of directors resolves that it is, or is likely to become at some future time, insolvent.

**Intellectual Property Rights** means all industrial and intellectual property rights both in Australia and throughout the world, whether now known or devised in the future, and for the duration of the rights including any patents, copyright, registered or unregistered trade marks or service marks, registered designs and commercial names and designations, circuit layouts, database rights, and rights in relation to confidential information, insights, analytics and trade secrets, whether or not registered or registrable.

**Laws** means (whether in Australia or any other relevant jurisdiction) all laws, codes, guidelines and the like, including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by-laws, rules, regulatory principles and requirements, statutory rules of an industry body, statutory and mandatory codes of conduct, writes, orders, injunctions, judgements and industry-wide non-statutory rules in force or as applicable from time to time.

**Service** means the Tri-Search online system, Tri-Search website, Tri-Search products and Tri-Search support, unless otherwise specified.

**User** means an individual authorised to use the Service.

### 2. Term

- (a) The User will be bound by the terms and conditions set out in this Agreement from the date that the User first accesses or uses the Services.
- (b) This Agreement will apply to all visitors, users, members, contributors and others who access the Services. Where such a person accesses the Services on behalf of an entity or organisation, that entity or organisation will be bound by this Agreement.

### 3. Updates to the Tri-Search Terms and Conditions

- (a) Users can, at any time, access the then-current, latest version of the Tri-Search Terms and Conditions through a hyperlink, positioned with reasonable prominence, on the Tri-Search website: [www.trisearch.com.au](http://www.trisearch.com.au)
- (b) 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 notice (for example, by way of email or push notification) of such variation to the User.
- (c) In accessing the Services, it will be taken that the User accepts the updated conditions.

### 4. Tri-Search responsibilities

- (a) Tri-Search provides the Services on a non-exclusive basis and nothing in this Agreement prevents Tri-Search from providing services which are the same or similar to itself or to any third party.
- (b) Tri-Search will perform the Services:
  - i. in a professional workmanlike manner;
  - ii. with due care, skill and diligence; and
  - iii. in accordance with applicable Laws.

### 5. User responsibilities

- (a) The User will:
  - i. use the Services for the Authorised Purposes;
  - ii. be responsible for Users' compliance with this Agreement (including any applicable client order forms);
  - iii. use reasonable efforts to prevent unauthorised access to or use of the Services;
  - iv. notify Tri-Search promptly if the User becomes aware of any possible or actual unauthorised access or use of the Services;
  - v. ensure that the Users' use of the Services is in accordance with any applicable Laws;
- (b) The User will not:
  - i. make the Services available to any person other than as specified in the client order form;
  - ii. commercialise the Services;
  - iii. use the Services to store or transmit illegal materials or malicious code;
  - iv. use the Services in any way that may be illegal, obscene, threatening, defamatory, invasive of privacy, infringing intellectual property rights or otherwise injurious to third-parties;
  - v. submit or upload any content containing viruses, political advertising, commercial solicitation, mass mailings, or any form of spam or any information or program that may damage the operation of anyone else's computer; or
  - vi. use a false e-mail address, impersonate any person or entity, or otherwise mislead anyone as to the customer's origin (except to the extent that Tri-Search permits the use of a pseudonym, moniker, or customer name).
- (c) The User warrants that all information that the User provides to Tri-Search may be used by Tri-Search in providing the Services without breaching or infringing:
  - i. any copyright, trade mark, obligation of confidentiality or other personal or proprietary right;
  - ii. any law of defamation, obscenity or contempt of any court;
  - iii. any law concerning privacy; or
  - iv. any other law or applicable code (including any common law, statute, delegated legislation, rule or ordinance).
- (d) The User acknowledges that 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 Annexure "A" hereto.

#### 6. Payments and charges

- (a) All charges are payable net thirty days from date of invoice, or as otherwise specified by Tri-Search at its discretion.
- (b) 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.
- (c) If the User defaults in payments due and payable in accordance with paragraph (a) Tri-Search reserves the right at its sole discretion, without limiting Tri-Search's other rights and remedies under this Agreement:
  - i. to suspend access to the Service until such amounts are received in full; and
  - ii. if payment is not made within 14 days of the due date specified in the tax invoice, to cease providing access to the Service and terminate this Agreement with immediate effect.
- (d) If any amounts are due and payable but not received by Tri-Search within thirty (30) days from the date on which such amounts fall due, then, at Tri-Search's sole discretion, we may:
  - i. terminate this Agreement (and any applicable client order form) immediately; and
  - ii. transfer the right to receive, recover or pursue such amounts to a third party and the User will be liable to Tri-Search and/or the third party for any associated costs until such time as such amounts are paid in full to such third party;
- (e) In addition to paragraph (d) above, if:
  - i. any amounts are due and payable but not received by Tri-Search within sixty (60) days from the date on which such amounts fall due, and
  - ii. the amount owed is over \$150.00, and
  - iii. Tri-Search has requested payment of the debt either in person (for example by phone call) or in writing (for example, by sending an email or letter to the details the User) or is unable to contact the User
 then, at Tri-Search's sole discretion, Tri-Search may notify a commercial credit reporting agency and provide the User with notice of Tri-Search's intent to do so.
- (f) 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.

#### 7. Payment information

All information that you provide in connection with a purchase or transaction or other monetary transaction interaction with the Service must be accurate, complete, and current. You agree to pay all charges incurred by users of your credit card, debit card, direct debit or other payment method used in connection with a purchase or transaction or other monetary transaction interaction with the Service and at the prices in effect when such charges are incurred.

#### 8. Taxes

- (a) Subject to clause 9 in relation to GST only, Tri-Search fees do not include any taxes, duties or charges imposed or levied in Australia or overseas (collectively, Taxes) in connection with this Agreement and its performance.
- (b) If Tri-Search have a legal obligation to pay or collect any Taxes on the Users' behalf or arising under paragraph (a), the User agrees that Tri-Search can invoice such amounts to the User,

unless the User provides Tri-Search with an authorised tax exemption certificate from the appropriate taxing authority.

#### 9. GST

- (a) Any consideration or amount payable under this Agreement (including any non-monetary consideration) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this Agreement, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (in this clause 9 only, the **Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under paragraph 9(b) is payable at the same time and in the same manner as the Consideration for the Supply.
- (d) If for any reason the amount of GST payable on a Supply varies from the Additional Amount payable by the Recipient under paragraph (b):
  - i. the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
  - ii. the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
  - iii. the Supplier must notify the Recipient of the refund, credit or further amount within 10 Business Days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification and the Recipient must pay any further amount within 5 Business Days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 10 Business Days after becoming aware of the occurrence of the Adjustment Event.
- (e) Despite any other provision in this Agreement:
  - i. if an amount payable under or in connection with this Agreement (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred; and
  - ii. no Additional Amount is payable under paragraph (b) in respect of a Supply to which s 84-5 of the GST Law applies.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.

#### 10. Licence

In using the Services, the User grants to Tri-Search a non-exclusive, royalty-free, transferable, sub-licensable, worldwide license to host, use, distribute, modify, run, copy, publicly perform or display, translate, and create derivative works of your content (consistent with the Tri-Search Privacy Policy). The User can end this license anytime by deleting their account.

#### 11. Warranty

- (a) Both parties warrant that they have the capacity, power and authority to enter into and perform this Agreement and have obtained all necessary approvals, consents and authorisations to enable it to do so.

- (b) To the maximum extent permitted by applicable law, Tri-Search provide the Services to the User on an "as is" basis and Tri-Search does not make or give any express or implied representations, conditions or warranties in relation to the Services, including Tri-Search do not warrant that the Services will operate uninterrupted, be free from defects or viruses or meet the Users' requirements.
- (c) Without limiting paragraph (b), the User acknowledges that:
  - i. Tri-Search does not provide any legal advice or legal services, accounting or other professional services advice by providing the User access to the Services;
  - ii. Tri-Search does not warrant or represent the accuracy, currency or quality of any legal or accounting information, any data provided by the User or any other information practice guides, legal forms, precedents, letters or documents which are provided as examples only and on the basis that the User is suitably qualified (or working under the direction of suitably qualified personnel) and will not rely on such documents;
  - iii. Tri-Search does not warrant the accuracy or timeliness of searches provided by any government department or agency or other third-party provider;
  - iv. Tri-Search does not warrant or represent that the Services can be accessed or operate without defects, data corruptions, software failures or performance degradation caused by viruses or by other software or components on the Users' or third-party hardware that may interfere with the Software (including any third party internet networks); and
  - v. Tri-Search do not warrant or represent that any of data supplied by the User and hosted on Tri-Search servers is secure, can be accessed uninterrupted or will be free from defects and viruses or will be stored, hosted or accessed without any loss or damage, data corruption, software failures or degradation.

## 12. Liability

- (a) The User's sole and exclusive remedy for Tri-Search's breach of any statutorily implied warranties, conditions or guarantees which cannot lawfully be excluded is, to the extent legally permitted, limited to, at Tri-Search's option, either providing those Services again or paying the cost of providing those Services again in respect of which the breach occurred.
- (b) To the maximum extent permitted by applicable law, Tri-Search excludes and will not be liable for any loss of revenue, business, anticipated savings or profits, loss of goodwill, loss of any data provided by the User to Tri-Search or for any indirect or consequential loss arising out of or relating to the Services or this Agreement (including any applicable client order form).
- (c) To the maximum extent permitted by applicable law, Tri-Search's liability arising under or in connection with this Agreement which is not otherwise excluded by paragraphs (a) and (b), is limited, in the aggregate, to the amounts paid or payable by the User to the service fees charged for the particular service to which such liability relates.
- (d) Our limitations and exclusions of liability as set out in this clause 12 apply regardless of the basis on which the relevant liability arises, whether in contract, tort (including negligence), equity, breach of statutory duty or otherwise.

## 13. Users, password and user manuals

- (a) 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 will pay such

amounts as invoiced by Tri-Search as if such amounts were incurred by the User).

- (b) Where the User requests in writing that Tri-Search cancel a particular password or account, Tri-Search will use its reasonable endeavours to cancel that password or account as soon as practicable in normal business hours following receipt of that request.
- (c) The User must notify Tri-Search of any actual or suspected loss, theft or unauthorised use of the Service or passwords. Tri-Search is not liable for any activity or any unlawful or unauthorised access to the Service.

## 14. Additional Services and Upgrades

- (a) 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 of variation to the terms and conditions of this Agreement. Usage of the additional services by the User after such notification shall be taken as agreement by the User to be bound by the conditions so displayed or notified.
- (b) From time to time Tri-Search may, at its sole discretion modify, upgrade, enhance or alter the Services at its sole discretion. All such modifications, upgrades, enhancements or alterations shall also be governed by the terms of this Agreement unless otherwise specified by Tri-Search.

## 15. Restrictions

- (a) Subject to the terms of this Agreement, we grant you a non-exclusive, nontransferable, revocable, limited licence to access and use the Services for the Term of this Agreement solely for your internal business purposes.
- (b) Tri-Search is the sole and exclusive owner of all right, title and interest (including all Intellectual Property Rights) in or in relation to the Services or any materials provided by Tri-Search under this Agreement.
- (c) Tri-Search is the owner of the copyright in the compilation of the information used to supply the Services, and in the reports supplied to Users when using Tri-Search's Services. Tri-Search has developed information technology, software and documentation that it may use to provide the information services to Users, and Tri-Search has copyright and other rights in those items. The User will not copy them, modify them, adapt them, reverse engineer them or infect them with viruses.
- (d) Except as permitted under this Agreement, the User must not, nor must the User authorise any third party to:
  - i. rent, lease, reproduce, modify, adapt, create derivative works of, distribute, sell, sublicense, transfer, or provide access to the Service to a third party;
  - ii. use the Service for any illegal purpose, or in violation of any laws (including without limitation data, privacy and export control laws);
  - iii. interfere with any license key mechanism in the Service or otherwise circumvent mechanisms in the Service intended to limit your use;
  - iv. reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code of the components of the Service or reproduce all or any portion of the said components; and
  - v. redistribute content from the Service (unless the content is specifically made for redistribution), without the written consent of Tri-Search, other than to the extent necessary to view the material as permitted by law.

## 16. Privacy

- (a) Tri-Search collects personal information in accordance with its Privacy Policy, available at [www.trisearch.com.au](http://www.trisearch.com.au) and updated from time to time. By using the Tri-Search services, the User

acknowledges that the User has read, understood and agrees to the Tri-Search Privacy Policy.

- (b) You must ensure that when you collect, use, disclose, transfer or otherwise handle Personal Information in relation to the Services or your obligations under this Agreement, you comply at all times with applicable Privacy Laws, procure that Users comply with applicable Privacy Laws, and not do anything with the handled Personal Information that will cause us to breach our obligations under Privacy Laws.

## 17. Confidential Information

- (a) The Receiving Party may only use the Confidential Information of the Disclosing Party for the purposes of exercising its rights or performing its obligations under this Agreement.
- (b) The Receiving Party must keep confidential, and not disclose, the Confidential Information of the Disclosing Party, except as permitted under paragraph (d).
- (c) This clause extends to Confidential Information of a party provided to or obtained by the other party before the Commencement Date.
- (d) The Receiving Party may disclose Confidential Information of the Disclosing Party:
  - i. to those of its personnel or any third party that need to know for the purposes of the Receiving Party exercising its rights or performing its obligations under this Agreement, provided that the Receiving Party uses its reasonable endeavours to ensure that such personnel or third parties keep the Confidential Information confidential in a manner consistent with the Receiving Party's obligation under this clause 17;
  - ii. to those third parties that need to know for the purposes of monitoring and analysing the Disclosing Party's usage of the Software and to assist with improving the Services provided under this Agreement;
  - iii. to the extent that disclosure is required by Law provided that the Receiving Party provides the Disclosing Party reasonable notice before any such disclosure and takes all reasonable steps to maintain that Confidential Information in confidence; or
  - iv. with the prior written consent of the Disclosing Party.

## 18. Third Party Information

- (a) The Tri-Search website may contain links to or provide information posted by, contributed to or advertised by third parties (Third Party Content). Tri-Search does not warrant the accuracy of any third-party content. The inclusion of such links or material is not an endorsement or recommendation by Tri-Search and Tri-Search accepts no liability for any Third-Party Content or for any loss or damage the User may suffer by accessing such websites or acquiring any goods or services from the suppliers of those websites or otherwise using or relying on Third Party Content.
- (b) The User agrees that the User will use the its own expertise and judgment when considering any Third-Party Content and the User acknowledges that Tri-Search is not providing any advice or recommendation in respect of any products, services or other information.

## 19. Termination

- (a) Either party may terminate this Agreement for cause with immediate effect by providing written notice to the other party if the other party:
  - i. commits a material breach of this Agreement that is capable of remedy and fails to remedy that breach within seven (7) days after receiving written notice identifying the breach and requiring the breach to be remedied;
  - ii. commits a material breach of this Agreement that is not capable of remedy; or

iii. is the subject of an Insolvency Event.

- (b) Tri-Search may terminate this Agreement for convenience at any time by providing at least 30 days written notice to you.
- (c) If this Agreement is terminated or expires:
  - i. the Users' right to access or use the Services ceases; and
  - ii. the User must immediately pay all outstanding amounts due and payable under this Agreement.
- (d) Any provision of this Agreement which, by its nature, would reasonably be expected to be performed after the termination of this Agreement, shall survive and be enforceable after such termination and termination of this Agreement does not affect any of Tri-Search or the Users accrued rights or remedies under this Agreement.

## 20. 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.

## 21. Entire Agreement

This Agreement and any client order form 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 inaccuracy caused by communicating via the internet.

## 22. 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.

## 23. Severability

If a provision of this Agreement or a right or remedy of a party under this Agreement is invalid or unenforceable it is read down or severed only to the extent of the invalidity or unenforceability.

## 24. Governing Law

This Agreement (including all client order forms) are governed by the laws in force in New South Wales, and each party irrevocably and unconditionally submits to the exclusive jurisdiction of New South Wales and the courts that hear appeals from them.

## Annexure A

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

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

##### Definitions

**Direct Marketing** means one to one marketing using personal details (e.g. name, address, email address or other Personal Information), normally supported by a database/resource, 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 email messaging (spam), postal canvassing and list brokering.

**Information Product** means a product supplied through online access search types (e.g. Title Search).

**Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

##### Ownership

I acknowledge that I have no rights of ownership in the Information Products and all intellectual property rights, including copyright in the Information Products that the State of Queensland (Department of Natural Resources, Mines and Energy) or the copyright owner has, are retained by the State of Queensland (Department of Natural Resources, Mines and Energy) or the copyright owner.

##### Liability

I acknowledge that, except as provided in the section titled Statutory Compensation below, the State of Queensland (Department of Natural Resources, Mines and Energy) does not guarantee the accuracy or completeness of the Information Products, and does not make any warranty about the Information Products. I agree that, except as provided in the section titled Statutory Compensation below, the State of Queensland (Department of Natural Resources, Mines and Energy) is not under any liability to me for any loss or damage (including consequential loss or damage) arising out of or in connection with my use of the Information Products.

##### Statutory Compensation

The provisions of the section titled Liability above are subject to the provision that the State of Queensland through the Department of Natural Resources, Mines and Energy will be liable to compensate me in accordance with the provisions of Subdivision C of Division 2 of Part 9 of the Land Title Act 1994 (as amended) if I suffer deprivation of a lot, interest in a lot or loss or damage in accordance with the Land Title Act. Where I am entitled to compensation against the State of Queensland through the Department of Natural Resources, Mines and Energy pursuant to the above-mentioned provisions of the Land Title Act, I agree that I will seek compensation in accordance with the provisions of the Land Title Act.

##### Privacy

I agree that I will not use, other than for the purpose for which the Information Products are provided under this agreement, or disclose to any other person, any Personal Information contained in the Information Products. I agree that I will not use the Information Products for Direct Marketing.

##### Permitted Use

I accept that the use of the Information Products by me will be limited to my own personal use or for use in the ordinary course of my business. I will not on-sell or distribute the Information Products to any other third party, nor will I produce any products incorporating the Information Products, except with the prior written approval of the State of Queensland (Department of Natural Resources, Mines and Energy).

##### General Conditions

This agreement will be governed by and construed in accordance with the laws of the State of Queensland, Australia.

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

The User acknowledges that;

- (a) The search extracts contained in the ASIC System and ASIC Registers are based on information provided to ASIC by third parties.
- (b) 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.

- (c) 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 "CD Office of the Registrar-General [year of publication]".

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

##### 1. Definitions and Interpretations

These terms are in conjunction with the agreement between Tri-Search and LANDATA® and the following definitions apply:

**Authorised Purposes** means:

- (a) Dealings with interests in land authorised by Law;
- (b) A purpose directly related to such dealing provided that the purpose is not contrary to any Law; or
- (c) 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:
  - (d) 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 available as part of the LANDATA® System;

**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:

- (a) Statutory land titles information as held in the Register including title searches and dealings affecting the title and other information made available to the LANDATA® System by the Registrar of Titles including information about unregistered dealings;
- (b) Searches of the Land Index;
- (c) The Property Transaction Alert Service;
- (d) Survey products including plan and instrument searches;
- (e) Property Enquiry Data including planning and other property related certificates;
- (f) Crown Land Information;

- (g) Information held in the Water Register comprising of the Water Share Record and Water Register Document; and
- (h) Any other data or information as notified in writing by LANDATA® and any update or new release of that material.

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

- (a) Statutory land titles information as held in the Register including title searches and dealings affecting the title 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) Survey products including plan and instrument searches;
- (d) Property Enquiry Data including planning and other property related certificates;
- (e) Crown Land Information;
- (f) Information held in the Water Register comprising of the Water Share Record and Water Register Document; and
- (g) Any other data or information as notified in writing by LANDATA®.

**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);

**Shell** means the portal through which a Customer, User or Ad-hoc Customer can access that part of the Licensed Material that the Licensor makes available through the Shell;

**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 the Licensed Material by way of online connection to any other party;
- (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) On selling or distributing the Licensed Material in any format;
- (f) Using the information available from the Licensed Material for other than the Authorised Purposes.

3. Tri-Search will not provide access to the Land Index unless the User has executed a deed in the form prescribed by LANDATA®.

4. 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).

5. 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 data under the terms of the agreement between Tri-Search and LANDATA®.

6. The User consents to the collection and use of the information which is provided by the User when using the LANDATA® System for all purposes associated with the use and operation of LANDATA®, the LANDATA® System and all related administration and operations of LANDATA®.

7. The User must maintain a record of all persons who are given access to the Licensed Material throughout the term of its Agreement with the Licensee and not less than 7 years from the date of termination or expiration of its Agreement with the Licensee.

8. The User may only store data drawn from the Licensed Material for a period of 120 days and after the expiration of that period the data must be deleted from any server or other data storage facility, but may be retained as part of the discrete record of that Enquiry. The User may only use the data stored for the purposes of the Enquiry for which it was originally made.

## 1.7 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;
- (c) 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.
- (d) 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;
- (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 (e.g. 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:**

- (a) they have first been approved by Landgate's authorised delegate in writing (including by email), which approval will not be unreasonably withheld; and
- (b) 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.