

Terms of use

Terms and conditions (Terms) for Our Website as provided by Landchecker Pty Ltd ABN 31 607 394 696

THESE TERMS GOVERN ALL ACCESS TO, AND USE OF, OUR PRODUCTS AND FORM A LEGALLY BINDING AGREEMENT BETWEEN YOU AND US. YOU ACKNOWLEDGE AND AGREE THAT THESE TERMS AND THE PRIVACY POLICY APPLY TO YOUR ACCESS TO, AND USE OF, OUR PRODUCTS. BY ACCESSING OR USING OUR PRODUCTS, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD, AND AGREE TO BE BOUND BY THESE TERMS.

1. Access

1.1 Subject to these Terms, We grant:

- (a) Free Members a non-exclusive, non-transferable, non-sub licensable limited licence to access and use Free Products;
- (b) Individual Members a non-exclusive, non-transferable, non-sub licensable limited licence to access and use Essentials Products in consideration of payment of the Plan Fee;
- (c) Professional Members a non-exclusive, non-transferable, non-sub licensable limited licence to access and use Professional Products in consideration of payment of the Plan Fee;
- (d) Professional Plus Members a non-exclusive, non-transferable, non-sub licensable limited licence to access and use Professional Plus Products in consideration of payment of the Plan Fee
- (e) Standard Members a non-exclusive, non-transferable, non-sub licensable limited licence to access and use Standard Products in consideration of payment of the Plan Fee;
- (f) Advanced Members a non-exclusive, non-transferable, non-sub licensable limited licence to access and use Advanced Products in consideration of payment of the Plan Fee; and
- (g) Enterprise Members a non-exclusive, non-transferable, non-sub licensable limited license to access and use Enterprise Products in consideration of payment of the Plan Fee.

1.2 **You:**

- (a) acknowledge that Our Property Reports and Products are generated based on data provided by Our Service Providers;
- (b) agree that You have read and agree to be bound by the terms of conditions of Our Service Providers as set out in the following links:
 - (1) State of Victoria at <https://creativecommons.org/licenses/by/4.0/legalcode> ;
 - (2) State of New South Wales at <https://creativecommons.org/licenses/by/4.0/> ;
 - (3) State of Tasmania at <https://creativecommons.org/licenses/by/4.0/legalcode> ;
 - (4) State of Queensland at <https://creativecommons.org/licenses/by/4.0/> and <https://creativecommons.org/licenses/by/3.0/au/> ;
 - (5) Brisbane City Council, Redland City Council, City of Gold Coast, Logan City Council; Ipswich City Council and Noosa Shire Council at <https://creativecommons.org/licenses/by/3.0/au/> ;
 - (6) Moreton Bay Regional Council at <https://creativecommons.org/licenses/by/4.0/>;
 - (7) Sunshine Coast Council at <https://creativecommons.org/publicdomain/zero/1.0/legalcode> ;
 - (8) South Australia at <https://creativecommons.org/licenses/by/4.0/> ;
 - (9) State of Western Australia at <https://www.landgate.wa.gov.au/terms-of-use/>;
 - (10) Australian Capital Territory at <https://creativecommons.org/licenses/by/4.0/> ;
 - (11) Northern Territory of Australia at <https://nt.gov.au/page/copyright-disclaimer-and-privacy>

- (12) Commonwealth of Australia in respect of census data at <https://creativecommons.org/licenses/by/4.0/> ;
 - (13) ASIC at <https://asic.gov.au/>
 - (14) Mapbox Inc. at <https://www.mapbox.com/tos/> ;
 - (15) Open Street Maps at <https://www.openstreetmap.org/copyright>;
 - (16) PropTrack Pty Ltd [Copyright and Legal Disclaimers about Property Data](#) and
 - (17) the Australian Curriculum, Assessment and Reporting Authority at <https://creativecommons.org/licenses/by/4.0/> ;
- (c) acknowledge that if there is an inconsistency between these Terms and the terms and conditions of Our Service Providers, the terms and conditions of Our Service Providers prevail to the extent of the inconsistency; and
 - (d) acknowledge the terms and conditions of Our Service Providers may be amended from time to time.

1.3 To use Our Products, You acknowledge and agree that:

- (a) You must be at least 18 years of age;
- (b) these Terms will be effective for the duration of each Plan Period, unless amended in accordance with the Terms. Plan Fees are paid in advance of each Plan Period;
- (c) Your first Plan Period starts when You first become a Member at the commencement of the first Plan Period. You must pay the Plan Fee via credit card, or such other payment method as We may advise from time to time for Your initial Plan Period. Following Your initial Plan Period, You must pay the Plan Fee as determined according to Your Plan level;
- (d) You may terminate Your Plan Period at any time by advising Us in writing, however We will not make any refunds. If You cancel Your automatic recurring payment, You will be able to access Our Products until Your Plan Period expires;
- (e) We may change our Plans and the price of our service from time to time; however, any price changes or changes to your Plans will apply no earlier than 30 days following notice to you. If you do not wish to accept the price change or change to your Plan, you can cancel your subscription before the change takes effect; and
- (f) We may terminate or suspend Your access to, and use of, Our Products if You are late in payment of any Plan Fees under these Terms.

2. Landchecker Account

2.1 To use all of the functionality of Products, You must become a Member. To become:

- (a) a Free Member, You must provide Us with Your information (including, Your name and e-mail address); or
- (b) an Individual Member or a Business Member, You must provide Us with Your information (including, without limitation), Your name, address and e-mail address. Payment of the Plan Fees are via credit card, or such other payment method as We may advise from time to time.

2.2 Your use of Products requires an e-mail address and password. It is important that You keep Your password secret and secure. You are entirely responsible for maintaining the confidentiality of Your password and You may not give Your password to any other person or third parties. You are responsible for all usage or activity on Your account including, without limitation, use by any person using Your password. We maintain records as to the internet protocol (IP) address of the machine from which You have entered Your e-mail address and password.

2.3 You may change Your password at any time by following the instructions on Products.

2.4 You agree to notify Us immediately of any unauthorised use of Your e-mail address and password or any other breach of security associated with Your account.

2.5 You acknowledge and agree that:

- (a) for security reasons, We may require You to re-authenticate Yourself from time to time, particularly after any period of inactivity; and
- (b) We are not responsible for any information that You may lose if We terminate any browser session due to inactivity.

3. Conditions of Use

3.1 You must not:

- (a) commit or permit any act by any third party or use Our Products, in any way that infringes:
 - (1) Our Intellectual Property rights;
 - (2) the Intellectual Property rights of Our Service Providers;
 - (3) the Intellectual Property rights of suppliers of database services to Our Service Providers; or
 - (4) any other third party's Intellectual Property or other rights.

3.2 We may provide You with Communication Services. You acknowledge that Communication Services may be:

- (a) public and not private communications; and
- (b) collected, stored and scanned by Us, however, You should not consider Communication Services to have been reviewed, screened, or approved by Us.

3.3 We may, but have no obligation to, review the use of the Communication Services by You and in Our absolute discretion. We may delete, edit, refuse to post or remove in whole or part any information or material uploaded or posted using the Communication Services.

3.4 You must not, in any form or by any means, through Your use of Communication Services or otherwise:

- (a) use Our Products in any manner which is unlawful, offensive, threatening, defamatory, obscene, indecent, incorrect, fraudulent, misleading, deceptive or otherwise inappropriate;
- (b) use Our Products to transmit spam, chain letters, contests, junk mail, surveys or any other manner of mass marketing, other than as approved by Us;
- (c) use Our Products to advertise or offer to sell any goods or services unless permitted by Us;
- (d) disclose, transfer, duplicate, reproduce, retain for a purpose other than that for which it was first acquired, sell or reuse any information in Our Products, regardless of the form in which that information was supplied;
- (e) copy or transfer to any other file, any information in Our Products where it may be accessed in machine readable form;
- (f) download any file posted by another user of the Communication Services that You know, or reasonably should know, is unlawful or contrary to these Terms;
- (g) transfer, retransmit, duplicate or resell any information in Our Products to any third party;
- (h) use any information in Our Products to combine with other information with the object of offering it online or in any other way to third parties; or
- (i) delete any author attributions, legal notices or proprietary designations or labels in any file that is uploaded to Our Products.

3.5 Except as expressly authorised by (and subject to any conditions prescribed under) any applicable Laws or these Terms, You must not, in any form or by any means, including by the use of Communication Services:

- (a) copy, adapt, modify, reproduce, store, distribute, print, display, perform, broadcast, publish, communicate to the public, make available to the public or create Derivative Works of the whole or any part of Our Products (including all trademarks);

- (b) interfere with or disrupt (or attempt to interfere or disrupt) Our Products, any servers or networks connected to Our Products or any other Members' use of Our Products;
 - (c) decompile, disassemble, reverse engineer, reverse compile Our Products;
 - (d) use any robot, spider, scraper, data mining process or other automated means to access Our Products without Our express written approval; or
 - (e) take any action, such as by excessive use of Our Products or the Communication Services, that:
 - (1) imposes or damages or may impose or damage (in Our sole discretion) an unreasonable or disproportionately high load on Our Products or Our infrastructure; or
 - (2) hinders or prevents or may hinder or prevent (in Our sole discretion) from providing Our Products or Our infrastructure; and
 - (f) without limiting clause 3.5(e), use an excessive and unreasonable amount of data by accessing Imagery or otherwise. Unless otherwise agreed by Us in writing, in excess of one (1) gigabyte per Member for each month, is considered by Us to be an excessive and unreasonable amount of data.
- 3.6 You must ensure that Your access to, or use of, Our Products is not illegal or prohibited by any applicable Laws, in force from time to time, in Your relevant jurisdiction or which otherwise pertains to You and Your use of, and access to, Our Products.
- 3.7 You may create Derivative Works incorporating Imagery, but no other aspect of Our Products, on the following terms:
- (a) You must not remove any logos, watermark or attribution from the Derivative Works;
 - (b) subject to clause 3.7(c), You may continue using Derivative Works following termination or expiration of these Terms; and
 - (c) You will at all times own all rights to Intellectual Property in and to any Derivative Works. If the Derivative Works include, embed or incorporate all or part of Our Products the rights to the Intellectual Property right of the embedded or incorporated Imagery remains the property of Us or Our Service Providers. To the extent the Derivative Works do include, embed or incorporate all or part of Imagery, You are, subject to compliance with these Terms, granted a non-exclusive right by Us to use the Imagery in the Derivative Works but not otherwise.
- 3.8 You must act reasonably in using Our Products and not utilise a number of Members (or seats) or allow access to Your account that does accurately reflect Your actual use of Our Products, this includes for any "uncapped" or "unlimited" Products term.

4. Licensed Material (Victoria)

Members who pay the Property Document Fees for Licensed Material access and use those Licensed Materials in accordance with the following terms, the Member:

- 4.1 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; and

- (e) using the information available from the Licensed Material for other than the Authorised Purposes;
- 4.2 The Member 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 of Victoria 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;
- 4.3 acknowledges and agrees that:
- (a) copyright in all information from the Register is owned by the State of Victoria or its licensors. No part of the Licensed Material supplied may be reproduced by any process except in accordance with the provisions of CA 1968, 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 of Victoria 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 of Victoria 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 of Victoria accepts no responsibility for any subsequent release, publication or reproduction of the information from the Register. The State of Victoria 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);
- 4.4 acknowledges that where a Member has access to Property Enquiry Data, the Member 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 Member supplies:
- (a) there is an error in the Register search statement or property certificate sent to the Member; or
 - (b) the wrong Register search statement or property certificate is sent to the Member, the Member is still responsible for the payment of the Property Document Fees for such certificate;
- 4.5 consents to the collection and use of the information by the State of Victoria through the LANDATA® System, which information is provided by the Member 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 of Victoria;
- 4.6 must maintain a record of all persons who are given access to the Licensed Material throughout each Plan Period and for not less than 7 years from the end of the final Plan Period, except where the Member is an Australian legal practitioner within the meaning of the Legal Profession Uniform Law, the Member must maintain the record in accordance with the Legal Profession Uniform Law. The Member is not required to maintain records of persons who are given access to the Licensed Material where such access is limited to Licensed Material reproduced in a vendor statement received by that person (and which vendor statement was produced and disclosed in accordance with Law); and
- 4.7 may only use the data stored for the purpose of the enquiry for which it was originally made, or for an Authorised Purpose.

5. NSW LRS / Spatial Services (New South Wales)

In respect of Property Data sourced from the State of New South Wales and services sourced from the Department of Customer Service (Spatial Services) and the New South Wales Land Registry Service (NSW LRS), Members acknowledge and agree that:

- (a) neither Spatial Services or NSW LRS warrants or represents that the material is free from errors or omission, or that it is exhaustive;
- (b) Spatial Services and NSW LRS disclaim, to the extent permitted by law, all warranties, representations or endorsements, express or implied, with regard to the material including but not limited to, all implied warranties of merchantability, fitness for a particular purpose, or noninfringement; and
- (c) Members are not permitted to do any of the following with the products and/or services, or any part of them:
 - (1) assign any rights or permissions in these terms and conditions to any other person;
 - (2) make a derivative work;
 - (3) rebroadcast, reformat, make available online or reconstruct;
 - (4) aggregate data, match data, compile mailing lists, marketing or any related process;
 - (5) reproduce, copy, publish, distribute, disseminate, sell or otherwise use any of the products and/or services in any manner not expressly authorised by these terms and conditions; or
 - (6) use the products and/or services in any manner that would violate any law or violate or infringe upon any Intellectual Property rights.
 - (7) use the Property Data other than for their own personal or business purposes;
 - (8) on-sell and/or sub-license Property Data to any other person (whether in its original or altered form);
 - (9) alter the format, meaning, substance, manipulate, transform, adapt, modify, blend or combine the Property Data supplied;
 - (10) make copies of the Property Data other than is reasonably required for their personal or business purposes or for back up purposes; or
 - (11) perform, or represent that they perform, the services of an information broker or a commercial reseller of Property Data.

6. LIST (Tasmania)

In respect of Property Data sourced from the State of Tasmania and services sourced from LIST, Members acknowledge and agree that the Crown in the Right of Tasmania and its employees and agents:

- 6.1 Give no warranty regarding the service's accuracy, completeness, currency or suitability for any particular purpose and those using it for whatever purpose are advised to verify it with the relevant government department in the State of Tasmania, local government body or other source and to obtain any appropriate professional advice; and
- 6.2 Do not accept liability however arising including, but not limited to negligence for any loss resulting from the use of or reliance upon the service or reliance on its availability at any time; and
- 6.3 Give no warranty the service or any data delivered via the service is free of infection by computer viruses or other contamination, nor access to the service or any part of it will not suffer interruption from time to time, without notice.

7. DNRME (Queensland)

- 7.1 Members acknowledge that Members have no rights of ownership in the Information Products and all Intellectual Property rights, including copyright in the Information Products that the DNRME or the copyright owner has, are retained by the DNRME or the copyright owner.

7.2 Members acknowledge and agree that except as provided for in clause 7.3 the DNRME:

- (a) does not guarantee the accuracy or completeness of the Information Products, and does not make any warranty about the Information Products; and
- (b) is not under any liability to Members for any loss or damage (including consequential loss or damage) arising out of or in connection with Members' use of the Information Products.

7.3 Clause 7.2 is subject to the provision that the State of Queensland through the DNRME will be liable to compensate Members in accordance with the provisions of Subdivision C of Division 2 of Part 9 of the Land Title Act if Members suffer deprivation of a lot, interest in a lot or loss or damage in accordance with the Land Title Act. Where Members are entitled to compensation against the State of Queensland through the DNRME pursuant to the above-mentioned provisions of the Land Title Act, Members agree that Members will seek compensation in accordance with the provisions of the Land Title Act.

7.4 Members agree that Members will not:

- (a) 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; and
- (b) use the Information Products for Direct Marketing.

7.5 Members accept that the use of the Information Products by Members will be limited to Members' own personal use or for use in the ordinary course of Members' business. Members will not on-sell or distribute the Information Products to any other third party, nor will Members produce any products incorporating the Information Products, except with the prior written approval of the DNRME.

8. LSSA (South Australia)

In respect of Property Data sourced from South Australia, that State owns or licenses the Intellectual Property Rights in that Property Data, Members acknowledge and agree that:

- (a) Members may not, without LSSA's or the State of South Australia's prior written permission, reproduce, display, store, print, publish, distribute, commercialise, perform, adapt, or create derivative works from any Property Data other than as permitted by law and as required for Your effective use of the Property Data;
- (b) LSSA and the State of South Australia do not attempt or purport to exclude any liability arising under statute if, and to the extent, that liability cannot be lawfully excluded. However, LSSA and the State of South Australia exclude to the extent lawfully permitted all liability for any loss or damage of whatever kind (including consequential or incidental damage) and however arising (including due to negligence) that You may suffer, directly or indirectly, in connection with Your use of or reliance on Online Services or any Content. Any warranties, guarantees, representations or other assurances implied or imposed by law or statute are expressly excluded to the fullest extent permitted by law. To the extent that any cannot be excluded, the liability of LSSA and the State of South Australia will be limited to the cost of the resupply of the Property Data; and
- (c) In no event will LSSA or the State of South Australia be of South Australia liable for any direct, indirect, special, punitive, exemplary or consequential losses or damages of any kind (including without limitation loss of profits, loss of data or damage to any equipment) arising out of Your use of or access to Property Data, Your inability to use the Property Data, or the interruption, suspension or termination of access to the Property Data, including any damage incurred by third parties.

9. Landgate (Western Australia)

9.1 In respect to the Property Data sourced from Landgate Western Australia the Member acknowledges that:

- (a) the Value Added Product is derived from Landgate's location information;
- (b) Western Australian Land Information Authority owns all copyright in the location information which is protected by the CA 1968 and apart from any use as permitted under the fair dealing provisions of the CA 1968, all other rights are reserved and no location information, or part of the location information, may be reproduced, distributed, commercialised or re-used for any other purpose without the prior written permission of Western Australian Land Information Authority (Landgate);
- (c) the location information that the Value Added Product is derived from is provided by Landgate in good faith on an "as is" basis and while Landgate has made every effort to ensure the accuracy, reliability, completeness and suitability of the location information, Landgate:
 - (i) does not give any guarantee or take any responsibility or accept any liability (including liability in negligence) arising from or connected to any errors or omissions in the location information;
 - (ii) accepts no responsibility and disclaims all liability for any losses, damages or costs as a result of the Member's use or reliance on the location information;
- (d) reliance on the location information may only be placed on the original source documents such as the certificate of title and survey plan available from Landgate;
- (e) it must exercise its own skill and care with respect to the use of the location information, and before relying on the location information, the Member must carefully consider its relevance to its purpose and obtain any professional advice appropriate to its particular circumstances;
- (f) areas and dimensions shown in the location information and Value Added Products may be approximate values only and the Member must refer to official registered documents, survey plans, diagrams etc available from Landgate for accurate area, dimensions and other information; and
- (g) the location information that the Value Added Product is derived from may be subject to Privacy Legislation and contractual restriction on its publication and Landgate takes no responsibility for any breach of Privacy Legislation by any person in relation to the location information;

9.2 In respect to the Property Data sourced from the Western Australian Planning Commission the Member acknowledges that:

- (a) only use a Value Added Product for its personal or internal business purposes and must not sell, licence, hire, let, trade, expose for sale, or derive revenue from the Value Added Product or part thereof;
- (b) not use the Value Added Product for the purposes of Direct Marketing, being any activity which makes it possible to offer goods or services or to transmit other messages to a third party aimed at informing or soliciting a response from the third party, as well as any service ancillary to the same;
- (c) acknowledges that the Value Added Product is derived from the WAPC's location information by the following notification: "© Western Australian Planning Commission. The

WAPC owns all copyright in the location information which is protected by the *Copyright Act 1968*. Apart from any use as permitted under the fair dealing provisions of the *Copyright Act 1968*, all other rights are reserved and no location information, or part thereof, may be reproduced, distributed, commercialised or re-used for any other purpose without the prior written permission of the WAPC.”;

(d) acknowledges that the location information that the Value Added Product is derived from is provided by the WAPC in good faith on an “as is” basis. While the WAPC has made every effort to ensure the accuracy, reliability, completeness and suitability of the location information, the WAPC does not give any guarantee or take any responsibility or accept any liability (including without limitation, liability in negligence) arising from or connected to any errors or omissions in the location information. The WAPC accepts no responsibility and disclaims all liability for any losses, damages or costs as a result of the use or reliance on the location information. Reliance should only be placed on the original source documents, which are available from the WAPC. It is strongly recommended that users exercise their own skill and care with respect to the use of the location information, and before relying on the location information, users should carefully consider its relevance to their purpose and obtain any professional advice appropriate to their particular circumstances;

(e) acknowledges that the data in Location Information and Value Added Products may be approximate values only. Refer to official source material available at the WAPC for current information;

(f) acknowledges that the location information that the Value Added Product is derived from may be subject to privacy legislation and contractual restriction on its publication. The WAPC takes no responsibility for any breach of privacy legislation by any person in relation to the location information.

10. ACT Government Online Maps and App (Australian Capital Territory)

In respect of the Property Data sourced from the Australian Capital Territory, Members agree that:

By accessing this material (whether by means of any robot, spider or other automatic device or agent, or any manual process) you are deemed to have accepted these terms of use. These terms of use apply in addition to any other specified terms (including licence conditions).

The Australian Capital Territory makes this material available for information purposes only and on the understanding that users exercise their own skill and care with respect to its use. Before relying on the material in any important matter you should carefully evaluate the accuracy, completeness and relevance of the material for your purposes and should obtain appropriate professional advice relevant to your particular circumstances. The Australian Capital Territory makes no representation or warranty as to the currency, reliability, accuracy or completeness, merchantability, fitness for purpose or suitability to your needs of the material. You use and rely on the material wholly at your own risk.

You waive and release the Australian Capital Territory to the full extent permitted by law from any and all claims relating to the usage of the material. Without limiting this general disclaimer, the Australian Capital Territory accepts no responsibility for any liability arising from or connected with any errors, omissions or inaccuracies or any lack of reliability, currency or completeness of the material or for any losses, damage, personal injury or death or any costs or expenses incurred as a result of your use of this material. In no event shall the Australian Capital Territory be liable for any incidental or consequential damages resulting from use of the material.

Where there is any concern about the accuracy or currency of the material you should contact spatialdata@act.gov.au

To the extent copyright subsists in this material, the terms of the stated licence also apply to your use of it. To the extent that copyright does not subsist in this material, if you share this material (including in any modified form) you agree to retain the identification of the Australian Capital Territory as the creator of the material, a notice that refers to these terms of use, including disclaimer and a URL or hyperlink to the material to the extent reasonably possible. You also agree to indicate if you modified the material and retain an indication of any previous modifications, and you must not to prevent recipients of any adapted version of this material from complying with these terms of use.

11. Department of Infrastructure, Planning and Logistics (Northern Territory of Australia)

11.1 You acknowledge that you have no rights of ownership in the Information Products and all Intellectual Property rights, including but not limited to copyright, remain vested in the Northern Territory of Australia.

11.2 You acknowledge that you will not be provided with the underlying data in the Information Products.

12. LANDATA

12.1 In this clause 12, the following definitions apply:

- (a) **Access** means any form of access to the Licensed Material or any information containing, sourced, extracted, modified, based on, utilising, generated or in any way derived from the Licensed Material, including accessing the same via Download, Enquiry and Read Only Access functions;
- (b) **Agreement** means the LANDATA® Licensing Agreement for Property Sales Data between the Licensor and Us;
- (c) **Confidentiality Deed** means a confidentiality deed in a form specified by the Licensor;
- (d) **Customer Agreement** means these Terms;
- (e) **Download** means the capture of any part of the Licensed Material in electronic form and the transmission of such material via the API or a file transfer to another storage medium or services (including hard drive, USB storage devices, optical storage medium, and electronic storage services);
- (f) **Enquiry** means electronic Access to any part of the Licensed Material by a person who may view data and reproduce a physical copy (such as by printing a hard copy) but who is prevented from modifying data or Downloading the material;
- (g) **Licensed Material** means that part of the data and materials relating to property sales and/or land valuation licensed by Us under the Agreement that is provided by Us to Members;
- (h) **Licensed Real Estate Agent** means a licensed real estate agent as defined in section 4 of the *Estate Agents Act 1980* (Vic);
- (i) **Licensor** means the Crown in right of the State of Victoria through the Department of Transport and Planning (ABN 90 719 052 204);
- (j) **Permitted Use** means the allowed use of the Licensed Material as described in the *Valuation of Land Act 1960* (Vic) and as directed by any Ministerial direction which is gazetted from time to time and as specified in these Terms;
- (k) **Read Only Access** means electronic access to any part of the Licensed Material by a person who may only view the data, and who is not permitted to copy it, retransmit it, reproduce it in a physical copy, modify it, delete it or Download it;
- (l) **Related Body Corporate** has the meaning given in section 9 of the *Corporations Act 2001* (Cth);

- (m) **Use** means to view or to use the Licensed Material;
- (n) **User** means a Member who is not a Valuer, Government Agency or Licensed Real Estate Agent;
- (o) **Valuer** means a practising land valuer who meets the requirements for qualifications or experience as specified from time to time by the responsible Minister under section 13DA(2) of the *Valuation of Land Act 1960* (Vic) or is a member of the Australian Property Institute.

12.2 You must not Access or Use the Licensed Material to:

- (a) prepare mailing lists or to assist in direct marketing; or
- (b) breach the provisions of the CA 1968 in relation to access to and use of the Licensed Material; and

You must ensure that no other person breaches the above conditions.

12.3 You acknowledge that you are only authorised to access certain parts of the Licensed Material depending on whether You are a Valuer, a Licensed Real Estate Agent, a Government Agency, or a User.

12.4 You agree that you will only Access or Use the Licensed Material for the Permitted Use and that you must not Access or Use the Licensed Material for direct marketing, including compilation, update or validation of mailing lists, list brokering, data matching, data analysis or data mining (whether through manual analysis or automated “big-data” type analysis), contacting vendors or purchasers, creating, preparing, compiling, updating or validating any marketing or contact lists, or promoting goods or services, including advertising delivery, measurement and targeting, lead generation and other promotional activities.

12.5 You must not cause or allow the presentation of the Licensed Material to be linked directly or indirectly to other information (including a reference to a website) that may infer that any part of the Licensed Material may be used or available for direct marketing or promotional purposes. For the avoidance of doubt, this clause does not prevent the Licensed Material being used for the purpose of general research of the property market.

12.6 You acknowledge that We are prohibited from offering any feature or service that would permit the Licensed Material to be searched by any name, such as the purchaser(s) name or vendor(s) name, and You must not Access or Use the Licensed Material (such as systematic or bulk Downloads) for the purpose of carrying out such a search.

12.7 You acknowledge that if you contravene any of the requirements of these Terms, then your Access to the Licensed Material may be suspended or terminated immediately.

12.8 Upon the expiration or termination of the Agreement or these Terms, You must immediately destroy all Licensed Material in your possession or control of You and your employees and agents, and provide to Us a certificate signed by your director or company secretary (if a company), a partner (if a partnership) or You (if a sole trader) verifying the destruction.

12.9 You may disclose the Licensed Material to another person as follows:

- (a) to any of your employees or agents on a needs to know basis, provided that the recipient, if required by the Licensor, procures the recipient to execute a Confidentiality Deed in favour of the Licensor;
- (b) if You are a Valuer or Licensed Real Estate Agent, to your client provided that all of the following are satisfied:

- (i) the client has commissioned You to carry out a valuation of real estate or engaged You to sell real estate on behalf of the client, such that You are required to prepare an estimated selling price of the real estate;
 - (ii) You only include such part of the Licensed Material necessary to carry out the valuation or prepare an estimated selling price for the client; and
 - (iii) in any case, details to be provided to the client must be limited to a relevant property address, land description, sale price and date of sale and must not contain any details of any vendor or purchaser contained in the Licensed Material;
- (c) in the case of a Licensed Real Estate Agent, in a statement of information prepared in accordance with section 47AF of the *Estate Agents Act 1980* (Vic) to the extent required to comply with that provision;
- (d) if You are a Valuer or Licensed Real Estate Agent, with the Licensor's prior written consent, to companies, firms or persons carrying on business by way of a common franchise agreement or a similar common business structure; and
- (e) as permitted by law.

13. ASIC

In respect of any content from ASIC provided to Members, Members agree 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 or ASIC Registers; and
- (d) extracts in relation to companies limited by guarantee which are registered charities with the Australian Charities and Not-for-profits Commission (**ACNC**) will not be up to date as charities now notify changes to the ACNC, not ASIC.

14. Outages / changes

14.1 You acknowledge that Our Products may not be free from fault or interruption and that Our Products may be unavailable during planned or unplanned outages or scheduled or unscheduled maintenance periods. We will take all reasonable steps to notify You of when outages or maintenance occurs and when the Our Products are temporarily unavailable.

14.2 We reserve the right to make any changes to Our Products as considered necessary or desirable by Us including, without limitation, updates and new releases.

15. Customer Materials

15.1 Each Member:

- (a) may from time to time provide or otherwise make available to Us the Customer Materials; and
- (b) grants to Us and Our Service Providers a worldwide royalty free, perpetual, irrevocable, nonexclusive right and licence to use, reproduce, distribute, transmit, perform, display (publicly or otherwise), adapt, make Derivative Works of and otherwise commercialise and exploit the Customer Materials.

15.2 Each Member represents and warrants to Us and Our Service Providers that:

- (a) it has the right to grant the licences in clause 15.1 in and to the Customer Materials;
- (b) the Customer Materials do not infringe upon or misappropriate any rights, including, without limitation, rights in respect of Intellectual Property of any third parties or Us and Our Service Providers; and

(c) the Customer Materials are free of worms, viruses, Trojan Horses, corrupted files, defects or any other disabling software code that may:

- (1) damage the operation of another's computer or damage any of Our Products' or Our infrastructure; or
- (2) impose (in Our sole discretion) an unreasonable or disproportionately high load on Our Products or on Our infrastructure.

15.3 Each Member represents and warrants to Us that it will abide by all applicable Laws, rules and regulations for any Customer Materials posted on Our Products or entered into Our Products from time to time.

15.4 To the extent that Customer Materials include or may include any Personal Information of an individual, each Member represents and warrants that it has obtained all necessary consents and authorities from the relevant individual to use and disclose the Customer Materials as contemplated by these Terms, and the use of the Customer Materials in accordance with these Terms will not cause Us to be in breach of Privacy Legislation.

15.5 We reserve the right to remove or refuse to distribute or publish any Customer Materials that violate these Terms.

16. Privacy

16.1 To the extent that We collect any Personal Information, We will comply with Privacy Legislation and the Australian Privacy Principles in relation to such information. The Privacy Policy applies to You, Your use of Our Products and Our use of Your Personal Information.

16.2 By using Our Products in accordance with these Terms, You consent to the collection, use, disclosure and storage of Your Personal Information in accordance with the Privacy Policy.

17. Consent

You acknowledge and agree that We, and Our Service Providers, may communicate with You for the purposes of:

- (a) Your use of the Website;
- (b) providing You with news and information about the Website and other relevant industry news;
- (c) responding to any specific request that You make of Us;
- (d) administering and managing the Website, as well as performing administrative and operational tasks;
- (e) notifying You of any changes to, enhancements of, or outages that may affect the Website;
- (f) providing You with the opportunity to 'opt-in' to receiving promotional material from time to time from Us or Our Service Providers; and
- (g) providing You with the opportunity to 'opt-in' and provide Your consent to participate in enhancements to or new features of the Website, through which We may use property or other information that is posed to or uploaded by You for the purposes of enhancing Your use of the Website.

18. Intellectual Property

18.1 We own, or have all the rights to, the Intellectual Property in:

- (a) Our Products; and
- (b) Data.

18.2 Nothing in these Terms grants You any ownership or Intellectual Property rights in:

- (a) Our Products; and

- (b) Data, which remain at all material times, as the case so requires;
- (c) Our property;
- (d) that of Our Service Providers; or
- (e) suppliers of any services to Our Service Providers.

16.3 We reserve Our rights to use, sell, commercialise or dispose of Data in the course of Our business.

19. Warranties and Liability

19.1 You represent and warrant to Us on a continuing basis that:

- (a) You will comply with all Laws and any industry codes that are related in any way to these Terms;
- (b) You will use up-to-date commercially available systems to protect the security of Your information technology infrastructure; and
- (c) Your use of Our Products in accordance with these Terms does not and will not breach any Laws or infringe the rights or duties owed to any person, whether arising under contract, common law or statute.

19.2 Whilst We agree to provide You with access to Our Products using reasonable care and skill, You acknowledge the availability and functionality of Our Products, and Your ability to access and use Our Products, may depend on factors and circumstances beyond Our control including:

- (a) telecommunications network issues (such as network capacity restrictions, physical and environmental conditions, technical constraints and issues experienced by any third party operator of any telecommunications network on which Our Products rely);
- (b) Service Provider issues and factors that prevent intended recipients from receiving alerts and other communications (for example, Service Provider and account issues),

We cannot therefore claim or guarantee that Our Products will be available to You at all times or be free from faults or interruptions.

19.3 You acknowledge and agree that:

- (a) We do not endorse, support, represent or guarantee the truthfulness, accuracy or reliability of any Customer Materials or other material posted to Our Products or entered into Our Products from time to time;
- (b) no advice or information, whether oral or written, obtained by You from Us or through Our Products will create any warranty not expressly included in these Terms or required by law;
- (c) Our Products are not a substitute for independent professional advice and You should obtain appropriate professional advice relating to Your own circumstances;
- (d) Our Products are provided on an 'as is' and 'as available' basis. Except for any Non-excludable Guarantee (as defined in clause 19.6), We and Our Service Providers exclude all terms, conditions, warranties and guarantees implied by custom, the general law or statute;
- (e) We may show links to websites operated by third parties, which links do not form part of Our Products and for which We do not accept any responsibility. If You follow a link to another website, You do so at Your own risk;
- (f) in respect of Property Data for real property:
 - (1) in the State of Victoria, it owns the copyright in the Property Data and the reproduction of that Property Data without the consent of that State will constitute a breach of CA 1968;
 - (2) in the State of New South Wales, it owns the copyright in the Property Data and the reproduction of that Property Data without the consent of that State will constitute a breach of CA 1968;
 - (3) in the State of Tasmania, LIST owns the copyright in the Property Data and the reproduction of that Property Data without the consent of LIST will constitute a breach of CA 1968;

- (4) other than as sourced from Queensland Councils, in the State of Queensland, the DNRME owns the copyright in the Property Data and the reproduction of that Property Data without the consent of the DNRME will constitute a breach of CA 1968;
- (5) sourced from Queensland Councils, the relevant Queensland Council owns the copyright in the Property Data and the reproduction of that Property Data without the consent of the relevant Queensland Council will constitute a breach of CA 1968; and
- (6) in respect of Property Data for real property in the State of South Australia, the State of South Australia owns the copyright in the Property Data and the reproduction of that Property Data without the consent of the State of South Australia will constitute a breach of CA 1968.
- (7) in respect of Property Data for real property in the State of Western Australia, the State of Western Australia owns the copyright in the Property Data and the reproduction of that Property Data without the consent of the State of Western Australia will constitute a breach of CA 1968.
- (8) in respect of Property Data for real property in the Australian Capital Territory, the Australian Capital Territory owns the copyright in the Property Data and the reproduction of that Property Data without the consent of the Australian Capital Territory will constitute a breach of CA 1968.

19.4 Without in any way limiting clauses 19.1, 19.2 and 19.3, You expressly acknowledge and agree that We and Our Service Providers make no warranty that:

- (a) Our Products will meet Your requirements, or will be uninterrupted, timely, secure, or errorfree;
- (b) if Our Products are installed by You, the software will be secure, uninterrupted or error free, will operate in combination with any other hardware, software, system or data;
- (c) errors or defects will be corrected; however, We will use reasonable errors to correct errors or defects within a reasonable period of time;
- (d) Our Products will be free of viruses or other harmful components; however, We will use reasonable endeavours to ensure that Our Products will be free of viruses;
- (e) any data stored by Us will be accurate, reliable or secure;
- (f) the performance of Our Products will not be affected by data entry errors, including incorrect entries, double entries or delayed entries, or incorrect or untimely data supplied by Members or Our Service Providers;
- (g) the Property Data obtained from Property Reports or use of Our Products will be accurate, complete or reliable; and
- (h) the Property Data downloaded or obtained by You through a Property Report or use of Our Products will meet Your expectations or requirements.

19.5 The use of the Property Data in Our Products is entirely at Your own risk and neither We nor Our Service Providers take any responsibility or liability for any Loss or damage suffered by You in reliance on the Property Data obtained or obtained from Our Products.

19.6 Any condition, warranty or guarantee that legislation applies to the supply by Us to You of Our Products under these Terms is taken to be included in these Terms, if that legislation renders void or prohibits contractual provisions which:

- (a) exclude, restrict or modify; or
- (b) which have the effect of excluding, restricting or modifying,
the application of, exercise of a right conferred by, or any liability under, such condition, warranty or guarantee (**Non-excludable Guarantee**).

19.7 You acknowledge and agree that, to the maximum extent permitted by law, We and each of Our Service Providers:

- (a) exclude all liability to You for any Loss (including loss of revenue, business, profits, goodwill or data) suffered by You in any way relating to these Terms or Your use of Our Products regardless of the basis of such liability and even if advised of the likelihood of such Loss; and
- (b) limit Our aggregate liability to Members, in connection with these Terms as follows, for:
 - (1) Free Members, in connection with these Terms or Member's use of Products to the amount of \$1.00;
 - (2) Individual Members and Business Members to an amount equal to the total Plan Fees that You have paid to Us during the Plan Period; and
 - (3) Property Reports to the amount of the Report Fee.

19.8 We acknowledge and agree that Your aggregate liability to Us, in connection with these Terms or Member's use of Products is as follows, for:

- (a) Free Members, to the amount of \$1.00; and
- (b) Individual Members and Business Members to an amount equal to the total Plan Fees that You have paid to Us during the Plan Period.

19.9 To the maximum extent permitted by law, neither party will be liable for any consequential, collateral, special, incidental, indirect, exemplary or punitive damages, however caused and based on any theory of liability, for any claims or causes of action arising out of or related to these Terms or the Products.

20. Indemnity

20.1 You agree to indemnify and hold Us and Our officers, employees and agents (those indemnified) harmless against all Loss (including loss of revenue, business, profits, goodwill or data) suffered or incurred by those indemnified in connection with:

- (a) any breach of these Terms by You; and/or
- (b) any wilful misconduct or fraud by You.

20.2 We agree to indemnify and hold You and Your officers, employees and agents (those indemnified) harmless against all Loss (including loss of revenue, business, profits, goodwill or data) suffered or incurred by those indemnified in connection with:

- (a) any breach of these Terms by Us; and/or
- (b) any wilful misconduct or fraud by Us.

21. Suspension and Termination

21.1 We may, at any time, by 30 days' notice to You, terminate these Terms for any reason whatsoever.

21.2 We may, at any time, by reasonable notice to You, where reasonably possible, temporarily, or indefinitely, suspend, disable or terminate Your access to Our Products or Your right to use Our Products, if any one or more of the following applies:

- (a) such suspension or termination is reasonably required for the maintenance (including preventative and routine maintenance), support, operation or security of Our Products;
- (b) We believe on reasonable grounds that You are in breach of any provision of these Terms;
- (c) We believe on reasonable grounds that You do not have all necessary authorisations to perform Your obligations under these Terms;
- (d) We believe on reasonable grounds that You have engaged in any conduct which may bring Us, Our Products or any of Our Service Providers into disrepute;
- (e) a Service Provider or Government Agency requires it; or
- (f) in respect of Individual Members or Business Members, You do not pay the Plan Fees when they fall due.

21.3 We reserve the right to terminate these Terms with immediate effect by notice if You breach these Terms, the breach is capable of remedy and You fail to remedy it within 21 days of receiving written notice requiring it to be remedied.

21.4 You may terminate these Terms for any reason whatsoever in accordance with clause 1.3(d).

21.5 Upon the termination or expiration of these Terms:

- (a) in respect of Business Members and Individual Members;
 - (1) You must pay Us any outstanding Plan Fees; and
 - (2) if applicable, We will refund to You a pro-rated proportion of any Plan Fees that You have having regard to the date of termination and the period in respect of which those fees were paid; and
- (b) Your e-mail address and password for Products (if any) will expire after 30 days; and
- (c) Clauses 15 (*Customer Materials*), 16 (*Privacy*), 18 (*Intellectual Property*), 19 (*Warranties and Liability*), 20 (*Indemnity*), 21.5, 22 (*Dispute Resolution*), 25 (*Public Statements*), 26 (*Notices*), 27 (*General Provisions*) and 28 (*Definitions*) continue.

21.6 The termination or expiration of these Terms for any reason does not extinguish or otherwise affect any rights of any party against the other which accrued prior to the time of the termination, or otherwise relate to or arise from any breach or non-observance of obligations under these Terms which arose prior to the time of termination, or which by their nature survive termination.

22. Dispute Resolution

Any dispute relating to these Terms (**Dispute**) must, prior to a party initiating litigation (other than for equitable or interlocutory relief), be dealt with as follows:

- (a) the affected party will notify the other with details of the Dispute (**Dispute Notice**) and, within 14 days of receiving the Dispute Notice, a nominated representative from each party will meet together and attempt to resolve the Dispute;
- (b) if unresolved within 28 days of the Dispute Notice, the Dispute will be escalated to one of Our senior executives who will meet with You and attempt to resolve the Dispute;
- (c) if still unresolved within a further 28 days of being escalated, either party may refer the Dispute to mediation in accordance with the rules of the Australian Commercial Disputes Centre and the parties must participate in that mediation in good faith;
- (d) if the parties cannot agree on a mediator within a further 28 days, the Dispute will be referred by the parties to the President, Australian Commercial Disputes Centre, Sydney to nominate a suitably qualified mediator and the parties will accept that nomination;
- (e) the parties will cooperate to enable the mediator to mediate the Dispute within 30 days of the mediator's appointment; and
- (f) the fees of the mediator will be paid by the parties in equal proportion.

23. GST

23.1 In this clause, expressions have the same meaning as they have in the GST law.

23.2 To the extent that We make a taxable supply in connection with these Terms, the consideration payable by a party under these Terms represents the value of the taxable supply for which payment is to be made.

23.3 If We make a taxable supply in connection with these Terms for a consideration which, under clause 23.2, represents its value, then if You are liable to pay for the taxable supply, You must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.

23.4 Members can access a tax invoice in respect of Report Fees, or Plan Fees after the Member has submitted payment of the Report Fees, or Plan Fees.

23.5 Subject to clause 23.3, each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with these Terms.

23.6 We warrant to You that We are registered for GST and will notify You if this ceases to be the case.

24. Amendments to Terms

24.1 We reserve the right to amend these Terms at any time. Any amendments will be effective immediately upon notification on Our Products.

24.2 Your continued use of Our Products following such notification will represent an agreement by You to be bound by the Terms as amended.

25. Public statements

You must not release to the public any news release, advertising material, promotional material or any other form of publicity relating to Us without Our prior written consent.

26. Notice

Notice must be in writing and in English and may be given by an authorised representative of the sender by email. Notice is deemed to be received by a party if sent by email, on the next Business Day after the email is sent.

27. General provisions

27.1 These Terms constitute the entire agreement between You and Us regarding the use of Our Products.

27.2 You must not assign, transfer or otherwise deal with any right under these Terms without Our prior written consent, which will not be unreasonably withheld. We may assign or novate Our rights and obligations under these Terms to any person by notice to You.

27.3 If We waive, in whole or part, any rights available to Us under these Terms on one occasion, this does not mean that those rights will automatically be waived on any other occasion.

27.4 If any of these Terms is held to be invalid, unenforceable or illegal for any reason, it is to be read down to give it as much effect as possible, or if it is not capable of having any effect at all, it is to be severed from these Terms, in which case, the remainder of these Terms nevertheless continue in full force.

27.5 The Laws governing these Terms will be the Laws in the State of Victoria, Australia. You irrevocably submit to the non-exclusive jurisdiction of the courts of that State, without regard to conflict of law provisions.

28. Definitions

In these Terms, unless the context otherwise requires:

28.1 **Advanced Products** means, for a number of Members (or seats) specified by Us, the product rights for an "Advanced" plan detailed at <https://landchecker.com.au/pricing/subscriptions/>;

28.2 **Advanced Member** means a Member who:

- (a) registers to use Landchecker;
- (b) accepts these Terms;
- (c) pays the applicable Plan Fees; and
- (d) who is able to access Advanced Products;

28.3 **ASIC** means the Australian Securities and Investments Commission;

28.4 **ASIC Register** means the registers which ASIC maintains, from time to time, pursuant to legislation;

28.5 **ASIC System** means ASIC's computer systems including all hardware and software, used to interface with the Information Broker System;

28.6 Authorised Purpose(s) means:

- (a) dealings with interests in land authorised by Law;
- (b) a purpose directly related to such dealing (such as preparing and providing vendor statements as required by Law) 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 or Victorian Civil and Administrative Tribunal order); or
- (e) reverse engineering or altering of the Licensed Material;

28.7 Business Day(s) means any day that is not a Saturday, Sunday or a public holiday in the State of Victoria;

28.8 Business Member means, as the context so requires, a:

- (a) Professional Member;
- (b) Professional Plus Member;
- (c) Standard Member;
- (d) Advanced Member; or
- (e) Enterprise Member;

28.9 CA 1968 means *Copyright Act 1968* (Cth);

28.10 Communication Services means the ability to communicate with Us and other Members, online forms, interactive voice response, electronic requests and enquires, bulletin boards, blogs, competition entries, online forums, inbound phone number services and other forms of electronic messaging;

28.11 Covered States and Territories means States of Victoria, New South Wales, Tasmania, Queensland, South Australia and Western Australia and the territories of the Australian Capital Territory and the Northern Territory of Australia;

28.12 Crown Land 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;

28.13 Customer Materials means any and all data, information, content, photographs, floor plans, metadata and other materials provided, or that may be supplied to Us by Members (or otherwise obtained by Us from the Members), directly or indirectly, from time to time, including any content posted or entered into Our Products from time to time;

28.14 Data means any data entered by Members on the Website in:

- (a) registering as a Member;
- (b) entering an address for real property;
- (c) entering Customer Materials;
- (d) searching for real property including, without limitation, its location, aspect, frontage, building type and any other Property Data in respect of that real property;

28.15 Derivative Work means any new work created by or for You;

28.16 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;

28.17 **DNRME** means the State of Queensland (Department of Natural Resources, Mines and Energy) or any successor;

28.18 **Enterprise Products** means, for a number of Members (or seats) specified by Us, the product rights for an “Enterprise” plan detailed at <https://landchecker.com.au/pricing/subscriptions/>, which will include at least the Advanced Products (and any additional products as agreed by Us and You);

28.19 **Enterprise Member** means a Member who: registers to use Landchecker;

- (a) accepts these Terms;
 - (b) pays the applicable Plan Fees; and
- who is able to access Enterprise Products;

28.20 **Essentials Products** means, as applicable, for a single Member (or seat):

- (a) an interactive map of the Covered States and Territories including planning overlays of the Property Data; (b) the right to:
 - (1) print a fixed number of Essentials Property Reports, as notified on the Website, and/or have those Essentials Property Reports sent via email; and
 - (2) upon payment of the Report Fee, to print an additional number of Professional Property Reports and/or have those Professional Property Reports sent via email;
- (c) the right to purchase Licensed Materials by paying Property Document Fees;
- (d) the right to access standard Imagery of real property, and upon payment of the applicable Plan Fee, the right to access High Resolution Imagery for a single Member (or seat);
- (e) the right to purchase certain information from ASIC; and
- (f) such additional products as may be notified on the Website that will be provided to Individual Members;

28.21 **Essentials Property Data** means the Property Data as set out on Our Website as being available to access by Individual Members;

28.22 **Essentials Property Report** means reports in respect of lots of real property that show Essentials Property Data;

28.23 **Free Products** means the product rights for a “Starter” plan detailed at <https://landchecker.com.au/pricing/subscriptions/>;

28.24 **Free Property Data** means the Property Data as set out on Our Website as being available to access by Free Members;

28.25 **Free Property Report** means reports in respect of lots of real property that show Free Property Data;

28.26 **Free Member** means a Member who:

- (a) registers to use Landchecker;
- (b) accepts these Terms; and
- (c) is able to access Free Products;

28.27 **Government Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

28.28 **GST** has the meaning given to that term in the GST law;

28.29 **GST law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

28.30 **High Resolution Imagery** means geospatial imagery of real property generated by Our Service Providers;

28.31 **Imagery** means either:

- (a) High Resolution Imagery; or
- (b) other mapping imagery of real property;

28.32 **Individual Member** means a Member who:

- (a) registers to use Landchecker;
- (b) accepts these Terms;
- (c) pays the applicable Plan Fees; and
- (d) is able to access Essentials Products,

28.33 **Information Broker System** means Our Service Provider's computer system, including all hardware and software engaged in ordering, receipt, storage, or transmission or Search Extracts from the ASIC System;

28.34 **Information Product** means a product supplied through online access search types (e.g. title search);

28.35 **Intellectual Property** means any and all:

- (a) current and future registered and unregistered rights in respect of copyright, designs, trademarks, trade names, business names, trade secrets, know-how, confidential information, patents, inventions and discoveries;
- (b) applications for grant of any of the above;
- (c) other rights of a similar nature arising (or capable of arising) under statute or at common law in the Commonwealth of Australia or anywhere else in the world; and
- (d) other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation 1967;

28.36 **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;

28.37 **Land Title Act** means the *Land Title Act 1994* (Qld) (as amended);

28.38 **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;

28.39 **Landchecker** means the online system that enables Members to:

- (a) access Property Reports;
- (b) obtain Property Data in respect of real property; and
- (c) use such other functionality as We may add from time to time;

28.40 **Laws** include any requirement of any statute, rule, regulation, proclamation, order in council, ordinance or by-law whether Commonwealth, state, territorial or local;

28.41 **Licensed Materials** means the material identified on Our Website for which Property Document Fees are payable and any update or new release of that material;

28.42 **LIST** means Land Information Systems Tasmania;

28.43 **Loss** means loss or damage of any kind (including liability to a third party);

28.44 **LSSA** means Land Services SA Operating Pty Ltd as trustee for the Land Services SA Operating Trust (ABN 86 836 650 939), trading as "Land Services SA" or any successor body;

28.45 **Member** means, as the context so requires, either:

- (a) a Free Member;
- (b) an Individual Member; or
- (c) a Business Member;

28.46 **Personal Information** means all information about a person that is 'personal information' as defined in the Privacy Act which is collected or held in connection with these Terms;

28.47 **Plan** means Your Landchecker subscription plan type which gives You access to the applicable Products;

28.48 **Plan Fee** means for:

- (a) Business Members, such GST exclusive amount as noted on the Website as We may determine from time to time per Plan Period and such fee will be for a number of users (or seats) as noted on the Website with associated passwords;
- (b) Individual Members, such GST exclusive amount as noted on the Website as We may determine from time to time per Plan Period and such fee will be for each discrete subscription associated with a single user, or seat, and associated password;
- (c) access to Licensed Material, the Property Document Fees; and
- (d) other Products, such other GST inclusive amount as noted on the Website We may determine from time to time to enable Professional Plus Members to access Products;

28.49 **Plan Period** means the period determined by Us applicable to Your Plan;

28.50 **Privacy Legislation** means the *Privacy Act 1988* (Cth), the *Information Privacy Act 2009* (Qld), the *Privacy and Personal Information Protection Act 1998* (NSW), the *Personal Information Protection Act 2004* (Tas) and the *Privacy and Data Protection Act 2014* (Vic);

28.51 **Privacy Policy** means Our privacy policy or statement from time to time, a current copy of which is available at www.landchecker.com.au/privacy or by sending an email request to support@landchecker.com.au;

28.52 **Products** means, as the case may be:

- (a) Free Products;
- (b) Essentials Products;
- (c) Professional Products;
- (d) Professional Plus Products;
- (e) Standard Products;
- (f) Advanced Products; or
- (g) Enterprise Products;

28.53 **Professional Plus Products** means, as applicable, for a number of Members (or seats) specified by Us:

- (a) an interactive map of the Covered States and Territories including planning overlays of the Property Data;
- (b) the right to print an unlimited number of Property Reports or have those Property Reports sent via email;
- (c) the right to purchase Licensed Materials by paying Property Document Fees;
- (d) the right to access standard Imagery of real property;
- (e) the right to:
 - (1) access High Resolution Imagery for a number of Members (or seats) specified by Us; and
 - (2) upon payment of additional fees per month, the right to access High Resolution Imagery for those Members (or seats);
- (g) the right to purchase certain information from ASIC; and
- (h) such additional products as may be notified on the Website that will be provided to Professional Plus Members;

28.54 **Professional Plus Member** means a Member who:

- (a) registers to use Landchecker;
- (b) accepts these Terms;
- (c) pays the applicable Plan Fees; and
- (d) who is able to access Professional Plus Products;

28.55 **Professional Products** means, as applicable, for a number of Members (or seats) specified by Us:

- (a) an interactive map of the Covered States and Territories including planning overlays of the Property Data;
- (b) the right to:
 - (1) print a fixed number of Property Reports, as notified on the Website, and/or have those Property Reports sent via email; and
 - (2) upon payment of the Report Fee, to print an additional number of Property Reports and/or have those Property Reports sent via email;
- (c) the right to purchase Licensed Materials by paying Property Document Fees;
- (d) the right to access standard Imagery of real property;
- (e) the right to:
 - (1) access High Resolution Imagery for a number of Members (or seats) specified by Us; and
 - (2) upon payment of additional fees per month, the right to access High Resolution Imagery for those Members (or seats);
- (g) the right to purchase certain information from ASIC; and
- (h) such additional products as may be notified on the Website that will be provided to Professional Members;

28.56 **Professional Property Data** means the Property **Data** as set out on our Website as being available to access by Professional Members, Professional Plus Members, Standard Members, Advanced Members or Enterprise Members as the case so requires;

28.57 **Professional Property Report** means reports in respect of lots of real property that show Professional Property Data;

28.58 **Professional Member** means a Member who:

- (a) registers to use Landchecker;
- (b) accepts these Terms;
- (c) pays the applicable Plan Fees; and
- (d) who is able to access Professional Products;

28.59 **Property Data** means, in relation to real property, without limitation the following:

- (a) an interactive map of the Covered States and Territories including planning overlays of the Property Data;
- (b) listing information in respect of real property;
- (c) planning zones and overlays;
- (d) cultural heritage sensitivity;
- (e) lot plan number;
- (f) the size of the property;
- (g) local government council area;
- (h) State electorates;
- (i) Imagery;
- (j) planning permit history;

- (k) nearby permit history;
- (l) recent and proposed planning scheme amendments;
- (m) sales history;
- (n) numbers of bedrooms, bathrooms and car spaces;
- (o) proximity to schools;
- (p) bushfire prone zones;
- (q) flooding zones; and
- (r) topography;

28.60 Property Document Fees means for access to Licensed Material, such GST exclusive amount as noted on the Website as We may determine from time to time;

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

28.62 Property Report means, as the context so requires, either:

- (a) a Free Property Report;
- (b) an Essentials Property Report; or
- (c) a Professional Property Report;

28.63 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;

28.64 Queensland Councils means Brisbane City Council, Redland City Council, City of Gold Coast, Logan City Council; Ipswich City Council, Moreton Bay Regional Council, Noosa Shire Council, and Sunshine Coast Council;

28.65 Register has the meaning given to it in section 4 of the *Transfer of Land Act 1958* (Vic);

28.66 Report Fee means such GST inclusive amount as noted on the Website, as We may determine from time to time, that enables Members to purchase Property Reports;

28.67 Search Extract means the information, data, copy of document image (doc image) or document extract, including ASIC Registers, that are accessible by Us through the ASIC System, or as otherwise notified by ASIC;

28.68 Service Provider means any of Our agents, contractors and/or licensors who provide Us with content, services and technology enabling Us to deliver Our Products, including but not limited to, GlobalX Pty Ltd, the State of Victoria, the State of New South Wales, the State of Tasmania, the State of Queensland, the Queensland Councils, the State of South Australia, the State of Western Australia, the Commonwealth of Australia, the Australian Capital Territory, the Northern Territory of Australia, ASIC, Mapbox Inc., Open Street Map, Proptrack Pty Ltd and the Australian Curriculum, Assessment and Reporting Authority;

28.69 Standard Products means, for a number of Members (or seats) specified by Us, the product rights for a “Standard” plan detailed at <https://landchecker.com.au/pricing/subscriptions/>;

28.70 Standard Member means a Member who:

- (a) registers to use Landchecker;
- (b) accepts these Terms;
- (c) pays the applicable Plan Fees; and
- (d) who is able to access Standard Products;

28.71 Terms means these terms of use;

28.72 **Test Database** means a replica of the ASIC System which operates outside ASIC's live or production environment;

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

28.74 **We, Us or Our** means Landchecker Pty Ltd ABN 31 607 394 696;

28.75 **Website** means Our website, including subdomains of that website and mobile sites, where,

(a) Free Members may access Free Products;

(b) subject to payment of the Plan Fee:

- (1) Individual Members may access Essentials Products;
- (2) Professional Members may access Professional Products;
- (3) Professional Plus Members may access and use the Professional Plus Products;
- (4) Standard Members may access and use the Standard Products;
- (5) Advanced Members may access and use the Advanced Products; and
- (6) Enterprise Members may access and use the Enterprise Products; and

28.76 **You, Yourself or Your** means any person or entity using, or intending to use, Our Products.

Effective: 1 July 2024