

**Definitions**

In these Terms and Conditions, unless the context otherwise requires:

- “**Administrator**” means an Approved User who is allocated an administrator login for viewing account transactions and billing codes, where applicable, made within an office by an Approved User;
- “**Approved User**” means an eligible sole trader or member of staff in a company or organisation which has entered into an Agreement with Terralink for Property Guru services;
- “**Data**” means data relating to property and consumer information in New Zealand, supplied by Terralink;
- “**End User**” means the person who uses the Data or accesses or receives a report;
- “**Fees**” means the total monthly charge and any applicable module fees;
- “**Information**” means the giving of feedback, asking questions, providing comments, suggestions or the like regarding the Site;
- “**LINZ**” means Land Information New Zealand;
- “**Password**” means the individual password and any additional security measures which may be introduced from time to time, allocated to an individual User Name which maybe changed from time to time;
- “**Service**” means Property Guru information services, (including the Legal Document Ordering service (if access enabled) and the Reports);
- “**Site**” means Property Guru at [www.property-guru.co.nz](http://www.property-guru.co.nz) (or any other associated or substituted sites);
- “**Terralink**” means Terralink International Limited;
- “**User Name**” means your work related email address;
- “**You**” means you, or any of your staff within your company or organisation.

**1 General Provisions**

1.1 Welcome to the Site. By using our Site you, your company or organisation has accepted the terms and conditions, including any special terms and conditions of any third party supplier of information or data which may apply to your use of this Site. As an “Approved User”, you must comply with the terms and conditions of use of the website. Please read these terms and conditions carefully so that you can ensure you comply with the terms of use.

**2 Username and Password**

2.1 You have been allocated a User Name and Password by Terralink. Upon notification to You by Terralink of your User Name and Password, you are required to change your Password from the initial password allocated to you by Terralink and once changed you are required to keep your User Name and Password secure and confidential and **must not share** this with any other person. You are responsible for all use of the Site made using the User Name and Password allocated to you, whether or not the use is made by you, your colleagues or by someone else using your User Name and Password. You are responsible for protecting and securing your

User Name and Password from unauthorised use. If you believe there has been a breach of security of your User Name or Password, such as theft or unauthorised use, where you have entered into an Agreement directly with Terralink, you must notify Terralink immediately by e-mail to [info@terralink.co.nz](mailto:info@terralink.co.nz) or if your company or organisation entered into the Agreement with Terralink, your designated Administrator, so that they can notify us.

2.2 Where your User Name and Password is used for the purposes of Legal Document ordering or to access any other services within the Site, you (where you have entered into an Agreement directly with Terralink), your company or organisation (as the case may be) are liable for all Legal Document ordering charges in addition to the monthly Fees.

2.3 If Terralink has reason to believe that any information you have supplied is not accurate, or if Terralink considers that you have breached any of these terms and conditions for use, we may immediately terminate the Agreement held by you, or your company or organisation (as the case may be) without liability to you, or your company or organisation, and you, your company or organisation will cease to be an Authorised User of the Site.

**3 Your Details**

3.1 Where your company or organisation entered into the Agreement with Terralink, they and not you, are required to provide us with complete and accurate registration information and to update the information provided if it changes, including any change to your e-mail or postal address. Where these change you are required to inform your designated Administrator so that they can update your information with us. If you entered the Agreement directly with Terralink, you are responsible for notifying us.

3.2 If you fail to notify us or your company or organisation of any change in your contact details, you or they may be in breach of the Agreement with us and if this occurs your access to this service maybe suspended or terminated. Therefore it is important that you comply with clause 3.1 above.

**4 Licensing**

4.1 From the commencement date of your access to the Service, you shall only be entitled to use this Service, including the contents of the reports or the reports themselves:

- (a) internally in the course of your ordinary business at the location or locations specified in the Application Form; and

- (b) in respect of the reports only, externally for your clients as End Users of the reports; and
  - (c) in respect to Property Guru Professional and Property Guru Signature subject to Schedules One and Two of these terms and conditions.
- 4.2 Other than as expressly provided for at clause 4.1 above and for the avoidance of doubt, you must not:
- (a) reverse engineer, decompile, disassemble, use a data extraction software or programme of any kind whatsoever or attempt to harvest the data within the Site for any purpose whatsoever, including for the purpose of setting up your own database(s); and/or
  - (b) sell, use, modify, copy, reproduce, republish or upload any information from within the Site to a third party (including the use of a link to any third party websites), nor post, transmit or distribute any Site content except as expressly provided for in this Agreement.
- 4.3 Where you on supply the Services to clients in any manner whatsoever, including but not limited to printing or emailing the Services, you must display the proprietary devices specified at clauses 4.4 and 4.5 below. For the avoidance of doubt such proprietary devices shall be displayed where you supply the Services in their original format as well as on any reproduction or adaptation of the Services.
- 4.4 Where the Services are on supplied to your clients in the format in which they were supplied, you shall use or ensure the use of the following proprietary device:



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- 4.5 Where the Services are on supplied to your clients in a format which is an adaptation of or amendment to the Services, you shall use or ensure the use of the following proprietary device:



Created Using

**5 Fees**

- 5.1 You, your company or organisation has agreed to pay the Fees plus any fees for legal document ordering (if applicable) in order to access Property Guru and if you, your company or organisation fail to make payment of the Fees or fees for legal documents, Terralink has the right to suspend or cancel your access to Property Guru.

- 5.2 Where your access to Property Guru is suspended for non payment of the Fees or fees for legal documents by you, your company or organisation, access will continue to be suspended until payment of all outstanding Fees or fees for legal documents is received by Terralink. Once payment is received by Terralink, access to Property Guru will be reinstated.

- 5.3 Where your access to Property Guru is terminated for non payment of the Fees or fees for legal documents by you, your company or organisation, access to the Services will not be reinstated by Terralink.

**6 Disclaimer**

- 6.1 All conditions, guarantees and warranties expressed or implied by statute, common law, equity, trade customer usage or otherwise, are expressly excluded to the maximum extent permitted by law.

- 6.2 Without limiting clause 6.1:

- (a) the Site and the Service are provided “as is” and “as available”, and you use the Site and the Service at your own risk. Access to the Site and the Service may be interrupted, restricted or delayed from time to time without notice. Terralink does not warrant or guarantee that the Site and the Service will be available continuously or that the operation of the Site and the Service will be error-free. Terralink reserves the right to change, modify, suspend or discontinue any or all parts of the Site and the Service at any time without notice;

- (b) you acknowledge and agree that some of the material on the Site and the Service is sourced from third parties outside Terralink. Terralink makes no representations and gives no warranties of any kind whatsoever in relation to any material on the Site and the Service. In particular, Terralink does not warrant that the material on the Site and the Service is free from errors, omissions, or other inaccuracies, or is fit for any particular purpose. You agree to release Terralink from all liability (whether in contract, tort [including negligence], equity or on any other basis) for any errors, omissions or other inaccuracies in the material on the Site and the Service;

- (c) Terralink makes no representations and gives no warranties that the material on the Site and the Service, as delivered, (whether or not it is combined with your data) will be capable of being processed on your computer equipment and software or that your data will be compatible with the material on the Site and the Service, or work effectively in

combination with the material on the Site and the Service;

(d) Terralink has no obligations to convert the material on the Site and the Service for use by you with your computer equipment and software (such conversion being entirely at your own risk), nor does Terralink have any obligation for training you or your personnel in the use of the material on the Site and the Service;

(e) Terralink does not give any warranty that the material on the Site and the Service will be free from infection, viruses or destructive code. Terralink shall not be liable (whether in contract, tort [including negligence], equity or any other basis) for any damage to, or viruses that may infect your computer equipment or software due to your use, installation or conversion of the material on the Site and the Service.

6.3 You understand and acknowledge that neither the Property Finder Report, Title Report, Title Transaction Report, Survey Report, Property Boundary Map, nor Aerial Photo plus Property Boundary Report or any other report, are the Land Transfer Index, Land Transfer Journal or any Landonline document in terms of the Land Transfer Act 1952 or any legislation in substitution thereof.

6.4 You acknowledge and agree that the limitations and exclusions of liability contained in:

(a) clauses 6.1, 6.2, 7.1, and 7.2 (with all references to Terralink are deemed to be replaced with references to LINZ and realestate.co.nz); and

(b) clause 7.3,

apply for the benefit of and may be enforced by LINZ or realestate.co.nz in relation to the material on the Site and the Service sourced by Terralink from LINZ or realestate.co.nz (as the case maybe) for the purposes of the Contracts (Privity) Act 1982, as may be amended from time to time. For the avoidance of doubt, this clause shall not in any way limit Terralinks' right to enforce any of the provisions of this Agreement in relation to the material sourced by Terralink from LINZ or realestate.co.nz.

## 7 Liability and Indemnities

7.1 Terralink shall not be liable (whether in contract, tort [including negligence], equity or on any other basis) for any loss, damage, liability, or expense sustained by you or any other person, directly or indirectly, from any use whatsoever of the material on the Site and the Service or otherwise in connection with this Agreement (even if Terralink has been advised

of, or has knowledge of, the possibility of such loss, damage, liability or expense). Such loss/damage includes, without limitation, damage to property, injury to persons, loss of profits, business interruption loss, loss of data, any other loss, damage or expense that arises either as a result of the material on the Site and the Service being shown to be wholly or partially incorrect or unsuitable, or arising from non-delivery or delay in delivery of the material on the Site and the Service and loss as a result of any amendment to or deletion of the material on the Site and the Service.

7.2 Without limiting clause 7.1, Terralink shall not be liable (whether in contract, tort [including negligence], equity or on any other basis) for any loss, damage, liability or expense whatsoever arising from any modification, amendment or deletion (whether pursuant to clause 8.2 of this Agreement or otherwise) made to the material on the Site and the Service or any compilation or derivative work created from or using the material on the Site and the Service in each case whether made by you, or by any other person.

7.3 In the event that any exclusion of Terralink's, LINZ's or realestate.co.nz liability set out in this Agreement is inapplicable or is held unenforceable, Terralink's, LINZ's and realestate.co.nz total aggregate liability under or in connection with this Agreement, or arising out of any use, reproduction, modification, amendment or deletion of the material on the Site and the Service, or creation of compilations or derivative works of or from the material on the Site and the Service (by you or by any other person), whether that liability arises in tort [including negligence], contract, equity or on any other basis, shall be limited as follows:

(a) Terralink's total aggregate liability shall be limited to \$100; and

(b) LINZ's and realestate.co.nz total aggregate liability shall be limited to \$1.00 each.

7.4 You agree to indemnify and hold harmless Terralink [*and Terralink's directors, employees, and agents and our third party licensors*] against all claims, proceedings, liabilities, costs, expenses, damages and losses (including any direct or indirect consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Terralink arising out of or in connection with your use of the Site and Service, or any breach by You of these terms and conditions.

## 8 Modification of Site, Service or Materials

8.1 Terralink reserves the right to change, modify, suspend or discontinue any or all parts of this

Site or Service at any time. Terralink reserves the right to restrict your access to parts or all of the Service without notice or liability.

- 8.2 Some of the materials in this Site and this Service are sourced from LINZ or other third parties. Terralink may at any time require you to amend or delete any material (or any part of the material) that you have obtained from this Site and this Service that it sourced from LINZ's or other third parties; and you may be required to provide satisfactory evidence to Terralink that such material has been amended or deleted as required by us.

## **9 Copyright**

- 9.1 The materials contained on this Site are protected under copyright and other laws of New Zealand and under international conventions, and similar laws abroad. Unless otherwise stated, copyright and other intellectual property rights in all material published on this Site, including, but not limited to the textual material, artwork, photographs, computer software, audio and visual elements, is owned or controlled by Terralink or its licensors.

- 9.2 You agree not to remove, cover, overlay, obscure or change any copyright notices, legends, or terms of use which Terralink may post on this Site.

## **10 Protected Rights**

- 10.1 The name and logo of Terralink and Property Guru are registered trademarks. You are not permitted to use or reproduce or allow anyone to use or reproduce these trade marks for any reason without our express written permission, which may be withheld. The software which operates the Site is proprietary software and you are not permitted to use it except as expressly allowed for under the terms of this Agreement. Any other use or purported licensing, modification, enhancement or interference is strictly prohibited.

## **11 Advertising Material**

- 11.1 Material appearing on this Site may include advertising and other material submitted by parties other than Terralink, and this Site may provide links to other sites operated by advertisers and third parties. Those parties (and not Terralink) are responsible for ensuring that such material and such sites comply with all relevant laws and regulations. To the full extent permissible or by law, Terralink disclaims all responsibility for any error, omission or inaccuracy in such material or its failure to comply with the relevant laws or regulations.

- 11.2 Terralink has no responsibility regarding any material you obtain from any other website, even if you access it via a link from this website. For the avoidance of doubt, this

includes but is not limited to any material you obtain from the Yellow® White Pages website.

## **12 Privacy**

- 12.1 Terralink is an Agency for the purposes of the Privacy Act 1993 or as may be amended from time to time. All personal information you or your company or organisation has supplied to Terralink will be dealt with by Terralink in accordance with that Act. Terralink may from time to time send you information on selected products and services and invite others to do so. Should you not wish to receive this material, email your request and contact details directly to [info@terralink.co.nz](mailto:info@terralink.co.nz) or have your company or organisation do so on your behalf. You are deemed to have given your permission to Terralink to convey all or part of your registration information to independent auditors for the sole purpose of verifying site usage statistics. As part of the verification process, you may be contacted by these independent auditors and asked to confirm that you, your company or organisation have an agreement to use this Site. Accordingly, you may not register any personal details other than your own.

- 12.2 You have the right to access your personal profile and if there are errors in the information, correct any of your personal information.

## **13 Submissions**

- 13.1 Should you respond to Terralink with information including the giving of feedback, such as questions, comments, suggestions, or the like regarding Property Guru or this Site ("the information"), or the content of any item, such information shall be deemed to be non-confidential and Terralink shall have no obligation of any kind with respect to such information. In addition, Terralink shall be free to reproduce, use, disclose, display, exhibit, transmit, perform, create derivative works, and distribute the information to others without limitation, and to authorise others to do the same. Furthermore, Terralink shall be free to use any ideas, concepts, know-how or techniques contained in such information for any purpose whatsoever, including, but not limited to, developing, manufacturing and marketing products and other items incorporating such information. This paragraph is not intended to apply to any personal information about you (such as name, mailing address and email address), the use of which will be governed by clause 12.

## **14 Governing Law**

These terms and conditions of use and the Agreement shall be referred to the New Zealand courts and the New Zealand courts shall have jurisdiction to hear and determine such dispute.

# PROPERTY GURU PROFESSIONAL AND PROPERTY GURU SIGNATURE – ADDITIONAL WEBSITE TERMS AND CONDITIONS

## SCHEDULE ONE

### PROPERTY GURU PROFESSIONAL

#### Definitions

“**PIQ**” means PropertyIQ NZ Limited;

“**Real Estate Agent**” means a real estate agent or a real estate company or organisation employing Real Estate Agent(s) as defined under the Real Estate Agents Act 2008, as may be amended from time to time;

“**Valuer**” means a valuer, valuation company or organisation, as defined under the Valuers Act 1948, as may be amended from time to time;

#### 1 Warranties

1.1 You warrant that you are either:

- (a) a Real Estate Agent and your main purpose of business is the sale and purchase of land and buildings; and you are licensed by the Real Estate Agents Authority; or
- (b) a Valuer and your main purpose of business is the valuation of land and buildings and you are registered as Valuer(s).

#### 2 Additional Licensing Permission

2.1 You are also permitted to use the data and reports externally:

- (a) for Real Estate Agents for the purpose of providing the property related information contained within the Site and/or the reports available on the Site to be supplied either by hard copy, facsimile or by email to a potential seller or buyer of the property; or
- (b) for Valuers, for the purpose of incorporating the property related information contained within the Site and/or the reports available on the Site into a valuation report, to be supplied either by hard copy, facsimile or by email to a client where a market valuation of the property in question is required.

#### 3 Additional Disclaimers

3.1 You acknowledge and agree that the limitations and exclusions of liability contained in clauses 6.1, 6.2, 7.1, 7.2 and 7.3 of the general Web Site Terms and Conditions (with all references to Terralink) are deemed to also be replaced with references to PIQ and apply for the benefit of and may be enforced by in relation to the material on the Site and the Service sourced by Terralink from PIQ for the

purposes of the Contracts (Privity) Act 1982, as may be amended from time to time.

3.2 In the event that any exclusion of PIQ's liability set out in this Agreement is inapplicable or is held unenforceable, PIQ's total aggregate liability under or in connection with this Agreement, or arising out of any use, reproduction, modification, amendment or deletion of the material on the Site and the Service, or creation of compilations or derivative works of or from the material on the Site and the Service (by you or by any other person), whether that liability arises in tort [including negligence], contract, equity or on any other basis, shall be limited to \$1.00.

### PROPERTY GURU SIGNATURE

**Definitions** “**Signature**” means the Service which enables users to access property information and which also enable the user to personalise proposals, for example current market appraisals, to prospective vendors to secure property listings;

#### 1 Use and Limitations

1.1 In relation to Property Guru Signature you acknowledge and agree:

- (a) that the information within Property Guru Signature is customized and personal to yourself and that you may include your or your company or organisations current branding;
- (b) that if you change to another operating entity, sole trader or company you acknowledge that Property Guru Signature information is not transferrable; and
- (c) that upon notification to Terralink of any change in circumstances as outlined in 1.1 (b) above, any and all information held by Terralink in Property Guru Signature will be deleted by Terralink from its database.

## **SCHEDULE TWO - PROPERTYIQ RETAIL TERMS AND CONDITIONS**

### **1. INTRODUCTION**

1.1 PIQ has agreed to make available to Terralink International Limited ("Terralink"), data relating to property and consumer information in New Zealand ("the Data") and Terralink has agreed to make the Data available to its End Users upon terms and conditions which include those set out in this Schedule.

### **2. COPYRIGHT AND RESTRICTION**

2.1 Data supplied to Terralink's End Users is subject to copyright. It is supplied solely for the purpose of Terralink's End Users own use and for those End Users who may be supplied the Data subject to the terms of the Agreement between PIQ and Terralink.

2.2 Terralink's End Users are expressly forbidden to use the Data to:

- (i) reproduce, establish databases, distribute the Data, create any mailing or address databases of persons or properties;
- (ii) generate statistics of any type for general release to the public;
- (iii) sell the Data to others;
- (iv) add to an existing or new database for whatever purpose;
- (v) further disseminate the Data supplied;
- (vi) match the Data supplied to any public register or other data for the purpose of creating any mailing lists;
- (vii) allow the Data to be used for a telemarketing campaign or telephone survey;
- (viii) use the Data supplied with any public register or other data for the purpose of selecting or filtering a mailing list;
- (ix) aggregate Data, or allow an End User of Terralink to do so, for promotion or publication to persons; and or
- (x) publish it by written, broadcasting, videotex, electronically on computer encoded mediums or by other means without the written consent of PIQ.

2.3 For the purpose of this clause, Rights Notice means the notice "Copyright and all other rights reserved" to be placed on Data to be attributed to PIQ.

### **3. PRIVACY**

3.1 The Privacy Act 1993, as may be amended from time to time, limits the use of personal information from public registries. Terralink's End Users are responsible for ensuring Data is used within the requirements of the Act.

### **4. WARNING**

4.1 The Data supplied:

- (i) is made available on an "as is" basis;
- (ii) is not a certified copy of any district valuation roll entry;
- (iii) is not provided for lending purposes;
- (iv) is not a valuer's report for the purposes of the New Zealand Trustee Act 1956; and
- (v) is not provided exclusively to Terralink, or Terralink's End Users.

### **5. EXCLUSION OF LIABILITY**

5.1 PIQ:

- (i) makes no representations as to the completeness, correctness, currency or fitness for any purpose of the Data supplied;
- (ii) will not be responsible for any damage to or loss suffered by Terralink's End Users arising from the service provided whether arising from negligence or otherwise beyond:
  - (a) resupplying this Service, or
  - (b) refunding the cost of supplying the particular service in issue or the Data.

### **6. INDEMNITY**

6.1 Terralink's End Users assume the sole responsibility for all use of the Data supplied and agree to indemnify PIQ from any liability or claim of any person arising from the Data supplied. In addition, Terralink's End Users agree to indemnify PIQ against the consequences of any failure to carry out effectively Terralink's End Users' responsibility as provided in the Agreement between us and Terralink.

### **7. MODIFICATION OF TERMS**

7.1 This Agreement and the services to be provided may be changed by PIQ giving thirty (30) days notice in writing to the Terralink of:

- (i) changes to terms and conditions;
- (ii) changes in Data available.

7.2 No provision shall be waived and no change shall be binding unless in writing signed by PIQ.

8. **ASSIGNMENT**

8.1 Terralink's End User may not assign or novate this Agreement unless the End User obtains the specific written consent from Terralink that the End User may do so.

9. **TERMINATION**

9.1 PIQ may require Terralink to terminate or suspend the supply of Data to Terralink's End Users at any time in accordance with the Agreement between us and Terralink. All copyright, data privacy and use of Data obligations remain in effect after termination of this or any other Agreement for all Data, copies and compilations retained by Terralink's End Users.