

STANDARD TERMS OF SUPPLY OF SERVICES (Fast Track Service)



1. AGREEMENT TO SUPPLY SERVICES

1.1. **LAND SERVICES SA OPERATING PTY LTD (ACN 618 229 815) as trustee for the LAND SERVICES SA OPERATING TRUST (ABN 86 836 650 939) (LSSA)** has agreed to provide, and the Client agrees to purchase, certain fast track examination and registration services for an Instrument or Instruments in series with such services more particularly described in the **"Fast Track Product Guide"** (current at the date of this agreement) (**Services**) on these standard terms of supply of services.

2. STANDARD OF SERVICES

2.1. LSSA represents and warrants to the Client that, in performing the Services, it will:

- (a) use reasonable skill, care and diligence expected of a professional service provider in the relevant field of expertise in which LSSA has been engaged;
- (b) use reasonable endeavours at all times to faithfully and honestly discharge its duties in the course of providing the Services to the Client;
- (c) comply with all Laws; and
- (d) provided the Client has met their obligations under this Agreement (including as set out in clause 4.1) and that each applicable Instrument is compliant with the Approved Instrument Format, the Registration Requirements, all Laws and the Fast Track Criteria, register the applicable Instrument by no later than the Target Date.

3. EXTENSION OF TARGET DATE

3.1. If:

- (a) each applicable Instrument once lodged with LSSA is not (in LSSA's opinion acting reasonably) compliant in all respects with the Approved Instrument Format, the Registration Requirements and all Laws; or
- (b) the Fast Track Criteria is not satisfied; and
- (c) LSSA has issued a Requisition by the Target Date,

the parties agree that the Target Date will be extended to the end of the third Business Day immediately following the Business Day that the Client fully and completely responds to that Requisition (including complying with any policies or guidelines published by LSSA from time to time for and on behalf of the Government).

3.2. The parties agree that clause 3.1 will have multiple applications for any subsequent Requisition issued by LSSA in respect to the applicable Instrument.

4. CLIENT'S OBLIGATIONS AND ACKNOWLEDGEMENTS

4.1. The Client is solely responsible for:

- (a) ensuring each applicable Instrument satisfies and complies with the Fast Track Criteria;
- (b) ensuring each applicable Instrument is compliant with the Approved Instrument Format, the Registration Requirements and all Laws;
- (c) ensuring applicable paper Instruments are lodged in person with LSSA over the front counter, and not through the 'Drop and Go' channel;
- (d) providing written notice to LSSA once the applicable Instrument has been lodged electronically; and
- (e) promptly, and completely, attending to any Requisitions of LSSA (including informing LSSA Personnel of the status of the applicable Instrument as a "Fast Track" Instrument when lodging any attended to Requisition).

4.2. The Client acknowledges that:

- (a) the procuring of the Services is voluntary;
- (b) the Client has complete autonomy to lodge the applicable Instrument without procuring the Services;
- (c) the Client retains the right at any stage to request any other expedited registered service offered by LSSA from time to time based on the personal circumstances of the Client (or, as applicable, its customer) including the "Red Packet" process;
- (d) the Services do not include the Exclusions;
- (e) the intention of the Services is to facilitate fast track Instrument registration but in no way guarantees that an Instrument will be registered;
- (f) the Services do not in any way fetter, limit or restrict LSSA's obligations to the Government and otherwise under Law to ensure that, in examining an Instrument, it will ensure any decision is Properly Made and that any Instrument complies with all legal requirements; and
- (g) while LSSA will use reasonable endeavours to meet the Target Date, certain acts or omissions of the Client may delay registration of an Instrument, including as contemplated by clause 3, and in such circumstances LSSA does not guarantee that the Target Date will be achieved.

5. FEES AND INVOICING

5.1. In consideration of being supplied the Services, the Client must pay the Fees.

5.2. Unless otherwise agreed between the parties, LSSA will invoice the Client for the Fees as soon as reasonably practicable after the acceptance by the Client of a quote or estimate in respect to the Services.

5.3. The Client must pay any invoice in full without set-off or counterclaim, and without any deduction or withholding for any tax or any other reason (unless required by Law), within 30 days of receipt of the invoice.

5.4. The Client agrees that any delay in LSSA issuing an invoice under clause 5.2 does not in any way waive LSSA's rights to issue an invoice in the future in respect of any Services rendered.

5.5. If the Client, in good faith, disputes any amount contained in any invoice or claimed as payable by LSSA, it shall pay the undisputed portion of the amount shown in the relevant invoice by the applicable due date and provide notice to LSSA setting out:

- (a) the date and invoice number of the relevant invoice;
- (b) the amount of the invoice in dispute;
- (c) the grounds for such dispute; and

any other allegation, matter or detail it considers relevant in relation to the disputed invoice.

5.6. Any disputed or amended amounts must be paid by the Client to LSSA within 14 days of the issue being resolved determining that LSSA is entitled to such disputed or amended amount.

5.7. Any amount not paid by the Client by the applicable due date will incur interest at a rate of 2% above the Reserve Bank of Australia Cash Rate calculated and compounded daily.

5.8. Without limiting any other rights LSSA may have under this Agreement or at Law, LSSA may suspend or terminate the Services, in whole or in part, or withhold any Services not yet performed if any amount due under this Agreement remains overdue.

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6. TERMINATION

6.1. Termination for cause

LSSA may terminate this Agreement by giving the Client written notice to that effect if:

- (a) the Client is in breach of any term of this Agreement and such breach is not remedied within 5 days of written notification by LSSA of the breach; or
- (b) the Client becomes the subject of insolvency proceedings.

6.2. Termination for convenience

- (a) The Client may, without cause, cancel any Services invoiced by LSSA up until:
 - i. for Services procured prior to lodgement of the applicable Instrument, the date of lodgement of that Instrument; or
 - ii. for Services procured after the date of lodgement of the applicable Instrument, the date LSSA commences performing the Services,

by providing written notice to LSSA, in which case the Client will be entitled to a full refund of any amounts paid in respect of that invoice through issuing a credit note to the Client.

- (b) Upon written request of the Client, LSSA may, in its sole and absolute discretion, permit the Client to cancel all or any portion of the Services invoiced after LSSA has commenced performing the Services. In exercising its discretion under this clause, the LSSA may take into account any factor it considers necessary including the extent of work undertaken by LSSA up to and including the date any request of the Client is made under this clause.

6.3. Rights and obligations on Termination

Termination pursuant to this clause does not prejudice any other rights accruing to LSSA prior to the date of termination, including the right to pursue all remedies available at law or in equity.

7. CONSEQUENTIAL LOSS

- 7.1. To the extent permitted by Law, under no circumstances will either party be liable to the other party for any loss of profit, loss of revenue, loss of anticipated savings, loss of contract, loss of business opportunity, loss of reputation or goodwill, loss of data or any special, exemplary, indirect or consequential loss arising in connection with this Agreement.

8. FORCE MAJEURE

- 8.1. Neither party is liable for any delay in performing, or failure to perform, its obligations pursuant to this Agreement (other than an obligation to pay money) if the delay or failure is due to Force Majeure.
- 8.2. If a party is delayed in performing, or fails to perform, its obligations (other than an obligation to pay money) due to Force Majeure, the performance of that party's obligations will be suspended.
- 8.3. If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 30 days, either party may immediately terminate this Agreement on providing notice in writing to the other party.

9. CONFIDENTIALITY

9.1. Disclosure generally

- (a) Neither party may, without the prior written approval of the other party, disclose the other party's Confidential Information.
- (b) A party does not breach clause 9.1(a) where it is legally compelled to disclose the other party's Confidential Information.

9.2. Disclosure by LSSA

LSSA does not breach clause 9.1(a) by making a disclosure for the purpose of:

- (a) a disclosure directed by the Government to enable it to disclose to Parliament, the Governor, Cabinet, any Minister of the Crown or Parliamentary or cabinet committee or sub-committee; or
- (b) disclosures which must be made by LSSA to Government as a consequence of LSSA's contractual obligations to the Government; or
- (c) prosecuting or defending any legal proceedings.

9.3. Use by LSSA

LSSA must not use any Confidential Information of the Client for any purpose other than performing its obligations under this Agreement.

9.4. Disclosure to or by employees, agents and subcontractors

Each party must take all reasonable steps to ensure that its Personnel do not make public or disclose the other party's Confidential Information.

9.5. Survival

This clause 9 will survive the expiry or termination of this Agreement.

10. PRIVACY

- 10.1. To the extent a party, or any of its Personnel, collects, holds, uses, discloses, stores or processes Personal Information relating to this Agreement, the party must comply with, and ensure that its Personnel comply with the Privacy Laws to the extent that they apply to the Client or those Personnel and otherwise as if the Privacy Law regulated all Personal Information.

11. CAP ON LIABILITY

- 11.1. To the extent permitted by Law, LSSA's total liability under and in connection with this Agreement is limited to an amount equal to the Fees paid by the Client for Services performed under this Agreement.
- 11.2. If the applicable Instrument is not registered by the Target Date, and:
 - (a) the Client has met their obligations under this Agreement (including as set out in clause 4.1); and
 - (b) the applicable Instrument is compliant in all respects with the Approved Instrument Format, the Registration Requirements, all Laws and the Fast Track Criteria,

LSSA will:

- (c) through issuing a credit note to the Client refund the Client in full, for the Fees paid for the Service for that Instrument; and
- (d) take all reasonable steps to register that Instrument as soon as practicable after the Target Date.

12. GST

- 12.1. In this clause 12, any expressions or terms used in this clause, unless otherwise defined in this Agreement, that are defined in the GST Law shall have that defined meaning.
- 12.2. In this Agreement, unless expressly stated otherwise:
 - (a) the consideration for any supply made under of in connection with this Agreement is exclusive of GST;
 - (b) if a supply made under or in connection with this Agreement is a taxable supply the recipient must pay the supplier an additional amount on account of GST equal to the amounts payable by the recipient for the supply multiplied by the prevailing GST rate;
 - (c) the additional amount on account of GST is payable at the same time and in the same manner as the consideration

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payable by the recipient are required to be paid to the supplier; and

- (d) where the supplier does not issue a tax invoice prior to the payment of the consideration, the GST amount is not payable until the tax invoice is issued;
- (e) if an adjustment event occurs in respect of any supply made by a party under or in connection with this Agreement, a corresponding adjustment to the consideration and GST amount must be made between the parties and the supplier must issue an adjustment note to the recipient; and
- (f) any cost or expense that is required to be reimbursed or indemnified under or in connection with this Agreement must exclude any amount in respect of GST included in the cost or expense for which the party seeking reimbursement was or is entitled to claim an input tax credit.

13. IMPLIED TERMS

- 13.1. Subject to clause 13.2, any condition or warranty which would otherwise be implied in this Agreement is excluded.
- 13.2. Where a Law implies in this Agreement any condition or warranty, and that Law avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty is deemed to be included in this Agreement.
- 13.3. However, if permitted by the relevant Law, the liability of LSSA for any breach of such condition or warranty is limited, at the option of LSSA, to one or more of the following:
 - (a) the supplying of the Services again; or
 - (b) the payment of the cost of having the Services supplied again.

14. NOTICES AND OTHER COMMUNICATIONS

14.1. Form - all communications

Unless expressly stated otherwise in this Agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this Agreement must be in writing.

14.2. Delivery

Communications must be:

- (a) left at the address set out or referred to in the Details; or
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details; or
- (c) given in any other way permitted by Law.

However, if the intended recipient has notified a changed address in writing then communications must be to that address.

14.3. When effective

Communications take effect from the time they are received or taken to be received under clause 14.4 (whichever happens first) unless a later time is specified.

14.4. When taken to be received

Communications are taken to be received, if sent by post, three days after posting (or seven days after posting if sent from one country to another).

14.5. Receipt outside business hours

Despite clauses 14.3 and 14.4, if communications are received or taken to be received under clause 14.4 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

15. TRUSTEE CAPACITY

15.1. Trustee Capacity

The parties acknowledge that Land Services SA Operating Pty Limited (**Relevant Trustee**) is entering into this Agreement as trustee for the Land Services SA Operating Trust (**Relevant Trust**). A liability arising under or in connection with this Agreement is limited to and can be enforced against the Relevant Trustee only to the extent to which it can be satisfied out of property of the Relevant Trust out of which the Relevant Trustee is actually indemnified for the liability. This limitation of liability applies despite any other provision of this Agreement and extends to all liabilities and obligations of the Relevant Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement. No party to this Agreement may sue the Relevant Trustee in any capacity other than as trustee of the Relevant Trust. This clause shall not apply to any obligation or liability of the Relevant Trustee to the extent that it is not satisfied out of the assets of the Relevant Trust because under the trust deed establishing the Relevant Trust or by operation of law there is a reduction in the extent of the Relevant Trustee's indemnification out of the assets of the Relevant Trust as a result of the Relevant Trustee's fraud, gross negligence, breach of trust or dishonesty.

16. GENERAL

16.1. Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Agreement expressly states otherwise.

16.2. No liability for Loss

A party is not liable for Loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this Agreement.

16.3. Approvals and consents

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

16.4. Costs

The parties shall be responsible for their own costs of negotiating, preparing and executing this Agreement.

16.5. Remedies cumulative

The rights and remedies provided in this Agreement are in addition to other rights and remedies given by law independently of this Agreement.

16.6. Variation and waiver

- (a) A provision of this Agreement, or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.
- (b) No forbearance, delay or indulgence by either party in enforcing any provision of this Agreement prejudices or restricts the rights of that party, nor does a waiver of any right operate as a waiver of any subsequent breach.

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16.7. Assignment

- (a) The Client must not assign this Agreement, in whole or in part, or subcontract the performance of any of its obligations under this Agreement without the prior written consent of LSSA.
- (b) LSSA may assign its rights and novate its obligations under this Agreement to such person or entity as from time to time takes over the assets or assumes the functions of LSSA relevant to the performance of this Agreement including, as applicable, the Government and the Client provides its consent to any such novation.

16.8. Indemnities

The indemnities in this Agreement are continuing obligations, independent from the other obligations of the parties under this Agreement and continue after this Agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right or indemnity under this Agreement.

16.9. Entire Agreement

This Agreement constitutes the complete agreement between the parties and supersedes all previous agreements, understandings and negotiations, written or oral, in respect of the matters dealt with in this Agreement.

17. GOVERNING LAW

This Agreement is governed by the law in force in South Australia. Each party submits to the non-exclusive jurisdiction of the courts of South Australia.

18. INTERPRETATION

18.1. References to certain general terms

Unless the contrary intention appears, a reference in this Agreement to:

- (a) **(variations or replacement)** a document (including this Agreement) includes any variation or replacement of it;
- (b) **(clauses and schedules)** a clause or schedule is a reference to a clause in or schedule to this Agreement;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(headings)** headings are for convenience only and do not affect interpretation;
- (e) **(law)** law means common law, principles of equity, laws made by parliament in any jurisdiction (and laws made by parliament including legislation, regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them) and any court order which a person is required by law to comply with;
- (f) **(singular includes plural)** the singular includes the plural and vice versa;
- (g) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any government agency;
- (h) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) **(joint and individually promisees)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;

- (j) **(jointly and individually promisors)** an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (k) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (l) **(calculation of time)** a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (m) **(meaning not limited)** the words "include", "including", "for example" or "such as", when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (n) **(time of day)** time is a reference to Adelaide time;
- (o) **(writing and form)** a reference to writing includes any method of representing written words, figures, drawings or symbols in a visible or tangible form; and
- (p) **(reference to any thing)** any thing (including any amount) is a reference to the whole and each part of it.

19. DEFINITIONS

The following words have these meanings in this Agreement unless the contrary intention appears.

Approved Instrument Format means the format of each of the regulated forms for an Instrument approved by the South Australian Registrar-General from time to time and as published by LSSA.

Business Day means any day except a Saturday, Sunday or declared public holidays in South Australia.

Confidential Information means information disclosed by, or on behalf of, a party to this Agreement that:

- (a) is by its nature confidential or by the circumstances in which it is disclosed is confidential; or
- (b) is designated or identified by the disclosing party as confidential or which the receiving party knows, or ought reasonably know, is confidential.

Details means the details set out in the applicable Fast Track Service Job Request Form.

ELNO means an Electronic Lodgement Network Operator.

Exclusions means the costs incurred in respect of lodging the Instrument for registration (including any applicable regulated fees and charges relevant to the Instrument or those imposed by the relevant ELNO).

Fast Track Criteria means the criteria which an Instrument must satisfy to qualify for the Services as set out in the Fast Track Service Job Request Form.

Fast Track Service Job Request Form means the form completed and signed by the Client in respect to the Services for the applicable Instrument or Instruments.

Fee means the fee(s) set out in the applicable Fast Track Service Job Request Form.

Force Majeure means a circumstance beyond the reasonable control of the party seeking to rely on Force Majeure and which results in that party being unable to observe or perform on time an obligation under this Agreement. Such circumstances include:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; and
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution.

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Government means the Treasurer of South Australia for an on behalf of The Crown in Right of the State of South Australia.

GST has the meaning it does in section 195-1 of the GST Act.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related or similar legislation.

GST Law has the same meaning given in the GST Act or, if the GST Act does not exist, any Act imposing or relating to the imposition or administration of a GST in Australia and regulations made under the GST Act.

Instrument means:

- (a) an 'instrument' as defined in the Real Property Act; and
- (b) any other form, document or application that is capable of registration by the Lands Titles Office or General Registry Office,

excluding a Plan. In respect to the Services, reference in this Agreement to an "**Instrument**" includes each Instrument lodged (including multiple Instruments lodged in series) in which in Client has requested Services under the applicable Fast Track Service Job Request Form.

Law means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in any jurisdiction.

Loss means any damage (whether foreseeable or not), loss, cost or expense (including legal fees on a full indemnity basis) and which may arise directly or indirectly.

Personal Information has the meaning given to that term in the *Privacy Act 1988* (Cth) and also includes any other information that could be used to identify an individual, including any information that could uniquely identify a property.

Personnel means, in respect of a party, the officers, employees, contractors (including subcontractors) and agents of that party.

Plan means any plan or map that is capable of registration by the South Australian Lands Titles Office or the General Registry Office under a relevant Law or as required by the South Australian Registrar-General, including cadastral plans, plans of division, uncertified plans or data plans.

Privacy Laws means the *Privacy Act 1988* (Cth) and the Australian Privacy Principles under the *Privacy Act 1988* (Cth).

Properly Made means that the relevant decisions and actions are, to the extent relevant, made:

- (a) in good faith and for a proper purpose;
- (b) based on logically probative material;
- (c) considering only relevant considerations and ignoring irrelevant ones;
- (d) giving adequate weight to matters of great importance and not giving excessive weight to matters that are not of great importance;
- (e) acting reasonably and on reasonable grounds;
- (f) exercising any discretion independently and fairly;
- (g) free of any conflict of interests or bias, or any reasonable perception of conflict of interest or bias; and
- (h) otherwise observing the basic rules of procedural fairness.

Real Property Act means the *Real Property Act 1886* (SA).

Registration Requirements for any Instrument lodged for registration, means:

- (a) the requirements that must be satisfied for that Instrument to be registered in accordance with any Law;
- (b) the relevant Approved Instrument Format;

- (c) any other requirements for that Instrument to be registered as directed by the South Australian Registrar-General from time to time.

Requisition means a notice delivered to the Client by LSSA under section 220(d) of the Real Property Act as delegate of the South Australian Registrar-General in respect of the applicable Instrument.

Services has the meaning given in clause 1.1.

Target Date means close of business on the third Business Day after the later of:

- (a) the Business Day that the Client provides written and signed acceptance of the quote for Services for the applicable Instrument in the Fast Track Service Job Request Form; and
- (b) the Business Day the applicable Instrument is validly lodged (either in paper with LSSA or through an ELNO) and the Client has provided written notice to LSSA of its lodgement,

as extended pursuant to clause 3.

Services has the meaning given in clause 1.1.