



**PARTIES TO THE CITEC CONFIRM TERMS AND CONDITIONS OF USE**

CLIENT USE ONLY

I/We hereby make application to be a registered user of CITEC Confirm and agree to be bound by the Terms and Conditions of Use of this Agreement.

\* Client Name: \_\_\_\_\_  
(Please Print)

Client Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\* In the case of a registered Business Name, the Proprietor/Owner should sign and date this Agreement.

CITEC USE ONLY

The above application by the Client to be a registered user of the System is HEREBY ACCEPTED by CITEC for and on behalf of the Crown in right of THE STATE OF QUEENSLAND ("the State") and the State agrees to be bound by the Terms and Conditions of this Agreement.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
(For and on behalf of CITEC)

# CITEC CONFIRM TERMS AND CONDITIONS OF USE

This version (1.1.17) of the CITEC Confirm Terms and Conditions of Use is valid as at 30 January 2012. This version replaces and takes precedence over the prior version (1.1.16) valid as at 01 September 2011.

## 1. Definitions and Interpretations

"Agreement"	means the commercial arrangement established in accordance with the Terms and Conditions of Use between CITEC and the Client.
"CITEC"	means a commercialised business of the Department of Public Works within the State of Queensland.
"Database"	means a database of a Database Provider to which the Client has access pursuant to this Agreement.
"CITEC Confirm"	means the equipment, programs and services provided by CITEC to allow Clients electronic access to publicly available information held in the databases of the Database Provider.
"Database Provider"	means a State or Commonwealth Department or instrumentality, or other Government or non-government body contributing a database to CITEC Confirm.
"Registration Details"	means the specific details the Client provides to CITEC for the purposes of establishing and operating a CITEC Confirm access account.
"Authorised User"	means a party or Representative of the Client who accesses CITEC Confirm.
"Client"	means the legal entity or entities registered as a CITEC Confirm client.
"Commercial Credit facility"	means a credit arrangement established with the Service Provider for the purpose of utilising CITEC Confirm
"Electronic Filing"	means a process whereby a Service Provider is authorised to act on behalf of an Approved Entity in relation to the electronic filing of documents at Magistrates Courts registries.
"Service Provider"	means the approved service provider CITEC through CITEC Confirm.
"Approved Entity"	means an entity as defined under Rule 975B of the Uniform Civil Procedure Amendment Rule (No. 1) 2009 or entity as defined under Rule 27 of the Queensland Civil and Administrative Tribunal Rules, 2009.
"System"	means CITEC Confirm

## 2. Term of Agreement

### 2.1 Commencement

This Agreement shall commence when the Service Provider accepts the Client's on-line registration or application. Notification of acceptance will be provided via e-mail within one (1) hour of the Service Providers acceptance of the Client's application. The Client's application will be subject to security and operational verification so that the Service Provider can be assured that the Client's CITEC Confirm access account is valid and representative of the Client and that such account has not been established in a manner which misrepresents the Client. The Service Provider will be under no obligation to provide CITEC Confirm access until such time as the security and verification process has been validated.

### 2.2 Variation

- 2.2.1 The Service Provider reserves the right to vary, change or discontinue any feature of CITEC Confirm at any time, including content, hours of availability, pricing, equipment required for access and these Terms and Conditions of Use.
- 2.2.2 The Client will be bound by the most current terms and conditions every time the Client visits the site; therefore the Service Provider suggests that the Client periodically review these terms and conditions for any changes as described under 2.2.1.
- 2.2.3 It is the Client's sole responsibility (including any of its Authorised Users) to inform itself in regards any notifications referenced under clause 2.2.2.

## 3. Termination

### 3.1 Registration Details and Suspension

CITEC Confirm access will only be provided to the Client where the Registration Details are correctly representative of the Client. The Service Provider, at its sole discretion, will suspend the Client's CITEC Confirm access account where the Registration Details provided by the Client are found to be misrepresentative.

### **3.2 Automatic Termination**

Automatic termination of this Agreement will apply where the client:

- (a) attempts to use CITEC Confirm without having paid all relevant charges in advance (this condition is not applicable where a client has an approved CITEC Confirm Commercial Credit Facility); or
- (b) is in breach of the Commercial Credit Facility arrangement.

### **3.3 Termination by Client**

The Client may terminate this Agreement by advising the Service Provider by e-mail, mail or facsimile. The notice of termination must be on letterhead signed by the authorised contact person and include the Client's Account Code. Termination will take effect when the Service Provider acknowledges having received such notice.

### **3.4 Termination by Service Provider**

The Service Provider may terminate this Agreement immediately and without notice in circumstances where the Client is in breach of this Agreement.

## **4. Transfer/Assignment of Right to Access CITEC CONFIRM**

4.1 The Client (including any of its Authorised Users) shall not assign or transfer the Client's rights under this Agreement without the prior written consent from the Service Provider.

4.2 The Client must notify the Service Provider immediately in writing in circumstances where:

- (i) The Client alters its legal status;
- (ii) The Client change's it's registered business or company name; and
- (iii) any order, resolution or step regarding insolvency or bankruptcy administration is made in relation to the Client.

## **5 Fees, Terms of Payment and Billing Cycle**

5.1 Unless the Client has an approved Commercial Credit Facility all fees are payable in advance.

5.2 Current Fees and charges are displayed through the "Fees" page of the CITEC Confirm web site [www.confirm.com.au](http://www.confirm.com.au) (post log-on). CITEC Confirm has two (2) elements to Fees and charges:

- (i) Database Provider Information Fees which are the Fees for the information levied by the Database Provider; and
- (ii) CITEC Confirm delivery Fees which are the Fees for delivering the information to the Client by the Service Provider.

### **5.3 Refund Policy**

- (i) Refunds are not available under any circumstances once searches have been ordered.
- (ii) Refunds will not be given for manual document ordering searches. A no result is considered a result and is therefore due and payable by the Client.
- (iii) Client misuse of activation buttons or any CITEC Confirm technology which incurs multiple or single Fees or charges will be due and payable by the Client to the Service Provider. No refund applies under these circumstances.

### **5.4 Billing**

- (i) Billing cycle to the Client will occur twice (2) monthly and will be issued on the fifteenth (15<sup>th</sup>) and last day of every calendar month. The application of this condition is limited to the Client maintaining a Commercial Credit Facility.

## **6 Minimum System Requirements**

6.1 CITEC Confirm uses internet technology. It is the responsibility of the Client to meet the technology requirements in relation to use of the System. The technology requirements are located at the CITEC Confirm website (refer to Help – Frequently Asked Questions). These technology requirements may vary from time to time.

## **7 Transmission Speed**

7.1 The Service Provider has no control over the speed of transmission of data where the internet is used for access.

## **8 Interruption to Service**

8.1 The Service Provider does not warrant that Client access to CITEC Confirm will be uninterrupted (except to the extent, if any, where such warranty may be implied by law and be incapable of exclusion by the Service Provider).

8.2 The Service Provider will use best efforts to provide access during the published hours of service. However, there may be an interruption to services to facilitate urgent reasonable maintenance by the Service Provider.

- 8.3 The Service Provider will not be liable to the Client or third parties for interruptions to the service beyond its control including but not limited to:
- (i) Problems with Client telecommunications services;
  - (ii) Problems with Client internet service provider; or
  - (iii) Problems with Client hardware or software,

except to the extent, if any, which the Service Provider may not be able to lawfully exclude such liability.

## 9 Disclaimer of Liability

- 9.1 The Client agrees that the Service Provider will not be liable to the Client for anything (even negligence) to do with CITEC Confirm (for example, without limitation, inaccurate information), except to the extent (if any) which the Service Provider cannot exclude liability.

## 10 Intellectual Property and Copyright

- 10.1 The Client acknowledges that the Client does not acquire any property rights in database information provided to the Client through CITEC Confirm.
- 10.2 CITEC Confirm and the CITEC Confirm logo are the registered trademarks of CITEC and remain the property of CITEC. Through the Client's use of CITEC Confirm the Client may also access the registered trademarks of Database Providers. Unless otherwise provided for under these Terms and Conditions of Use, the Client is not provided any authorisation to reproduce or utilise CITEC or Database Provider trademarks for any activity other than those prescribed under these Terms and Conditions of Use. All trademarks remain the property of their registered owner.

## 11 Use of Information

### 11.1 Databases

CITEC Confirm is made available only for the Client's personal information or business operations.

The Client agrees not to use CITEC Confirm data to provide or facilitate direct online access to any other person.

**NOTE: There are separate terms to be entered into by a Client wishing to resell CITEC Confirm services. These Terms and Conditions of Use do not provide a Client with the authority to resell CITEC Confirm services. Clients seeking reseller status will complete such application through a separate process conducted through CITEC Confirm.**

### 11.2 About the Client

CITEC will retain and protect all information provided by the Client for registration and CITEC Confirm purposes only (but may be legally required to disclose it in some circumstances, eg if ordered by a court to do so).

It is impossible to guarantee the protection of client personal data absolutely. CITEC Confirm uses encryption which provides a level of security. Client data may be exposed to loss, unauthorised access, use, modification or disclosure. CITEC will not use the information for on-selling to list brokers.

Persons under the age of 18 years are not legally permitted to become registered users of CITEC Confirm.

## 12 Account Code and Password Security

- 12.1 The Client shall be solely responsible for the use, maintenance and security of any client CITEC Confirm account codes and password's.
- 12.2 The Client will be solely liable and responsible for any use whatsoever of the Account Code and Password whether authorised or not.
- 12.3 The Client agrees not to reveal the Client's CITEC Confirm Password to any other person other than Authorised Users who the Client has provided access to use the Client Account Code and Password.
- 12.4 For security reasons, the Client shall be required to change the password when requested by the Service Provider.

## 13 Support Services

- 13.1 The Service Provider will provide Client support for the use of CITEC Confirm by e-mail. The Service Provider will endeavour to provide twenty four (24) hour turnaround on this service during published operating hours. An e-mail form is provided on the CITEC Confirm web site [www.confirm.com.au](http://www.confirm.com.au) for this purpose.
- 13.2 The Service Provider will provide twelve (12) months on-line access to Client usage report records. This access is for the purposes of assisting the Client to manage records in relation to end of year reconciliation. During this access period it is the Client's sole responsibility to download, retain and store the available records.

**13.3** Should the Client require records outside of any twelve (12) month access period then such records will be made available for a Fee agreed between the Service Provider and Client. Subject to a Client's written request (email acceptable) the Service Provider will provide a Fee quotation inclusive of an estimated delivery timeframe. Client acceptance of the Fee quotation will be required before the Service Provider proceeds to recover and deliver the Client records.

**13.4** The Service Provider is under no obligation to provide the Client records outside any twelve (12) month access period unless the Client has accepted a Fee quotation for the provision of such records.

## **14 Disputes**

**14.1** The parties will co-operatively resolve any dispute arising out of or in connection with this Agreement.

**14.2** Where the parties cannot resolve any dispute arising out of or in connection with this agreement under clause 14.1, the dispute will be resolved as follows:

- (i) The parties shall first refer the dispute to mediation by a Mediator who is approved by the Queensland Law Society ("The Society") and who is agreed to by the parties, or failing agreement, appointed by the President of the Society, on the terms of the standard mediation agreement approved by the Society.
- (ii) The reference shall commence when either party gives written notice to the other, specifying the Dispute and requiring its resolution under this provision.
- (iii) Any information or documents obtained through or as part of the reference under this provision shall not be used for any purpose other than the settlement of the Dispute under this provision.
- (iv) If the Dispute is not resolved within twenty one (21) days of the commencement of the reference under this provision, either party may then, but (subject to (v)) not earlier, commence proceedings in any court of competent jurisdiction.
- (v) Nothing in these Terms and Conditions of Use prevent a party from commencing court proceedings relating to any Dispute at any time where that party is seeking urgent interlocutory relief.

## **15 Governing Law**

**15.1** This Agreement shall be governed by and interpreted in accordance with the laws and courts of the State of Queensland.

## **16 Specific Databases - additional Terms and Conditions**

**16.1** Access to particular databases may be subject to certain additional database-specific terms. These additional database-specific terms form part of this Agreement. The Client agrees that by accessing a database, the Client agrees to the additional database-specific terms that are applicable:

- (i) Personal Property Securities Register Terms and Conditions of Use;
- (ii) Automated Titles System from Queensland Department of Environment and Resource Management;
- (iii) LANDATA® System access from Land Victoria (see schedule 8 attached)
- (iv) Land and Property Management Authority New South Department of Lands;
- (v) Electronic Lodgement of Documents – Queensland Magistrates Court;
- (vi) Electronic Lodgement of Documents – Queensland Civil and Administrative Tribunal;
- (vii) Landgate Terms and Conditions Western Australia

These documents can be viewed via the CITEC Confirm internet site [www.confirm.com.au](http://www.confirm.com.au) and CITEC recommends that you read these conditions of same prior to the execution of this Agreement. Land Victoria LANDATA® System access conditions are contained in schedule 8 attached.

## **17 Marketing Material**

**17.1** CITEC Confirm periodically posts by mail marketing material distributed for the purposes of marketing CITEC Confirm products and/or services to the Client. All marketing activities will be conducted in accordance with the Information Privacy Principles defined through the Information Privacy Act 2009.

## **18 This Agreement**

**18.1** This Agreement constitutes the whole Agreement between the Service Provider and the Client, and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

## **19 Waiver**

**19.1** None of these Terms and Conditions of Use will be taken to be waived except by written waiver executed between Service Provider and the Client.

## SCHEDULE 8 – LANDATA® SYSTEM ACCESS FROM LAND VICTORIA

### CONDITIONS FOR CUSTOMER AGREEMENTS AND USER AGREEMENTS

1. The Customer or User is prohibited from:
  - (a) providing the Licensed Material by way of online connection to any other party unless the Customer is also a Third Party;
  - (b) altering the format, meaning or substance of the Licensed Material;
  - (c) assembling or compiling, attempting to assemble or compile or directly or indirectly allowing or causing another person to assemble or compile or attempt to assemble or compile a database, directory or similar device which is similar in content, functionality or in any other respect to the Register or Land Index;
  - (d) extracting data from the Licensed Material, or directly or indirectly allowing or causing another person to extract data from the Licensed Material, using screen scraping, web scraping or any other similar data extraction techniques;
  - (e) on selling or distributing the Licensed Material in any format unless the Customer is also a Third Party; and
  - (f) using the information available from the Licensed Material for other than the Authorised Purposes.
2. The Licensee (and a Third Party where appropriate) shall not provide access to the Land Index unless the Customer or User has executed a deed in the form of Schedule 5 or Schedule 6 (whichever applicable) to the Agreement.
3. The Customer or User acknowledges and agrees that:
  - (a) copyright in all information from the Register is owned by the State. No part of the Licensed Material supplied may be reproduced by any process except in accordance with the provisions of the Copyright Act 1968 (Cth), pursuant to written agreement or to the extent required for the purpose of compliance with section 32 of the *Sale of Land Act 1962 (Vic)*;
  - (b) the State does not warrant the accuracy or completeness of the Property Enquiry Data, the information in the Property Transaction Alert Service, the information in the Land Index or Crown Land Status Information or other information made available by the LANDATA® System other than Title Search Data and any person using or relying upon such information does so on the basis that the State bears no responsibility or liability whatsoever for any errors, faults, defects or omissions in the information; and
  - (c) the information from the Register is valid at the time and in the form obtained from the LANDATA® System only. The State accepts no responsibility for any subsequent release, publication or reproduction of the information from the Register. The State accepts no responsibility for information or data other than that which is part of the Register as provided for in the *Transfer of Land Act 1958 (Vic)*.
4. The Customer or User acknowledges that where a Customer or User has access to Property Enquiry Data, the Customer or User is responsible for the accuracy and completeness of the information submitted in each application and that if, due to the inaccurate or incomplete information which the Customer or User supplies:
  - (a) there is an error in the Register search statement or property certificate sent to the Customer or User; or
  - (b) the wrong Register search statement or property certificate is sent to the Customer or User,the Licensee is still responsible for the payment of the fees and charges for such data under the terms of the agreement between the Licensee and the Licensor.
5. The Customer or User consent to the collection and use of the information which is provided by the Customer or User when using the LANDATA® System for all purposes associated with the use and operation of LANDATA®, the LANDATA® System and all related administration and operations of the Licensor.
6. The Customer or User must maintain a record of all persons who are given access to the Licensed Material.
7. The Customer or User may only store data drawn from the Licensed Material for a period of 120 days and after the expiration of that period the data must be deleted from any server or other data storage facility, but may be retained as part of the discrete record of that Enquiry. The Customer or User may only use the data stored for the purposes of the Enquiry for which it was originally made.

#### ***Where a Customer is also a Third Party, the following additional conditions apply***

8. The Customer must ensure that all of its employees, contractors and agents who have access to the LANDATA® System shall, where such access includes access to the Licensed Material, execute a deed in the form of Schedule 7 to the Agreement. The Customer must maintain such executed deeds throughout the Term and for a period of not less than 7 years after termination or expiration of the Agreement. The Customer must provide the original or a copy (certified or otherwise as required) of the deeds to the Licensee or Licensor (as the case may be) when and as requested by the Licensee or Licensor.
9. The Customer must ensure the service provided by the Customer is consistent with the service provided by the Licensee in all ways including but not limited to the content and the format of the Licensed Material.

10. The Customer is prohibited from assigning its right to on sell and distribute the Licensed Material or assigning its right to provide the information by way of online connection in any way.
11. The Customer undertakes to only provide access to the Licensed Material to Users who have a current User Agreement with the Customer.
12. The Customer must ensure that the User Agreement is in a written form and contains the conditions set out in Items 1 to 8 of this Schedule.
13. The Customer and any Users may only obtain access to the Licensed Material through the Licensee's server.
14. The Customer must ensure that any product or service provided by the Customer using the Licensed Material includes a clear and prominent notice stating that the Licensee, not the Customer, has entered into a licensing agreement with the Licensor to use the Licensed Material and any Licensed Material provided to the User is sourced from the Licensee's server, as set out in Item 8(d) of Schedule 1 of the Agreement.
15. The Customer agrees that the Licensor may have access to the Licensed Material via the Customer's Electronic Service without any fee being payable by the Licensor for such access.
16. The Customer is licensed to access the LANDATA<sup>®</sup> System in order to make the LANDATA<sup>®</sup> System available to its Users for online searches. Without limiting the general obligations on the Customer, it is a condition of this Customer Agreement that the Customer shall not use the Licensed Material to prepare mailing lists, list brokering or to assist in direct marketing or promotions.
17. The Customer shall not provide access to the Land Index to any person who has not executed a deed in the form of Schedule 6 and upon becoming aware that a User who, having executed the deed, has used Land Index information for other than the Authorised Purpose the Customer shall immediately prevent that User's access to the Land Index. The Customer must maintain such executed deeds throughout the term of its agreement with the Licensee and for a period of not less than 7 years after termination or expiration of the Agreement between the Licensee and the Licensor. The Customer must provide the original or a copy (certified or otherwise as required) of the deeds to the Licensee or Licensor upon and as requested by the Licensee or Licensor.
18. The Customer shall establish and maintain a record of all persons who are given access to the Licensed Material. The system must have a user identification code or password with an appropriate audit trail to show details of all instances of access to the Licensed Material, the User who gained that access and the person on whose behalf that access was sought. The Customer must provide the original or a copy (certified or otherwise as required) of such records to the Licensee or Licensor upon and as requested by the Licensee or Licensor and within a reasonable time of a request being made. Such records shall be maintained for a period of not less than 7 years after termination or expiration of the Agreement between the Licensee and the Licensor.
19. The Customer must ensure that the text below is included as appropriate in any Licensed Material provided to Users:
  - (a) Where the Land Index, dealing enquiry, pre-lodgement check, issue search, cancelled title searches, Crown Land Status Information, Property Transaction Alert Service notices or other information is made available by the LANDATA<sup>®</sup> System other than Title Search Data the following shall be included prominently at or near the commencement of the display of the information:

*© State of Victoria. This publication is copyright and includes confidential information. No part may be reproduced by any process except in accordance with the provisions of the Copyright Act 1968 (Cth) or pursuant to a written agreement. The State of Victoria does not warrant the accuracy or completeness of information in this publication and any person using or relying upon such information does so on the basis that the State of Victoria shall bear no responsibility or liability whatsoever for any errors, faults, defects or omissions in the information.*
  - (b) Where Title Search Data is made available the following shall be included prominently at or near the commencement of the display of the information:

*© State of Victoria. This publication is copyright. No part may be reproduced by any process except in accordance with the provisions of the Copyright Act 1968 (Cth) and for the purposes of section 32 of the Sale of Land Act 1962 (Vic) or pursuant to a written agreement. The information is only valid at the time and in the form obtained from the LANDATA<sup>®</sup> System. The State of Victoria accepts no responsibility for any subsequent release, publication or reproduction of the information.*
  - (c) Where survey report information is made available the following shall be included prominently at or near the commencement of the display of this information:

*The State of Victoria does not warrant the accuracy or completeness of information in this publication and any person using or relying upon such information does so on the basis that the State of Victoria shall bear no responsibility or liability whatsoever for any errors, faults, defects or omissions in the information.*
20. The Customer is not authorised to provide the Licensed Material to an Ad-hoc Customer.

## Definitions and Interpretation

21. This Customer Agreement or User Agreement must be read in conjunction with the Agreement between the Licensee and the State and the following definitions shall apply:

**Ad-hoc Customer** means a person who requests Licensed Material from the Licensee by way of telephone, mail, facsimile, email or via the Internet and who is not a Customer;

**Agreement** means the LANDATA<sup>®</sup> Licensing Agreement between the Licensee and the State;

**Authorised Purposes means:**

- (a) dealings with interests in land authorised by Law;
- (b) a purpose directly related to such dealing provided that the purpose is not contrary to any Law; or
- (c) an enquiry relating to land or the ownership of land recorded in the Register provided that the enquiry or the purpose of enquiry is not contrary to Law;

but does not mean:

- (d) data aggregation, data matching, marketing, compilation of mailing lists, list brokering of the Licensed Material or any related purpose except to the extent that such data aggregation, data matching, marketing, compilation of mailing lists, list brokering of the Licensed Material or related purpose is required by law (including any obligation under a court order).

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

**Customer** means the person so identified for the purposes of this Customer Agreement and, as appropriate, includes a Third Party, who has entered into a Customer Agreement for access to the Licensed Material in accordance with the Agreement, but does not include an Ad-hoc Customer;

**Customer Agreement** means this agreement and where appropriate includes an agreement between the Licensee and another Customer;

**Customer's Electronic Service** means a service provided by Internet connection or otherwise available by way of access to a computerised service;

**Land Index** means the electronic cross reference table listing registered proprietors, title particulars, parcel and property identifiers available as part of the LANDATA<sup>®</sup> System;

**LANDATA<sup>®</sup> System** means the computerised system, including the Shell, as varied from time to time which currently provides access to the Licensed Material;

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

**Licensee** means the Licensee to the Agreement;

**Licensed Material** means the material identified in Schedule 1 of the Agreement and any update or new release of that material;

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

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

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

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

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

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

**Third Party** means a Customer who has entered into an agreement with the Licensee in accordance with clause 16.1 of the Agreement to have access to and to re-supply the LANDATA<sup>®</sup> System to Users;

**User** means a person who has entered into a User Agreement with a Third Party for access to the LANDATA<sup>®</sup> System; and

**User Agreement** means an agreement a Third Party enters into with a User in accordance with clause 16.3 of the Agreement.