
Customer Terms and Conditions

1 Definitions

1.1 In these Terms:

ACL means the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

Additional Fees means fees payable by the Customer to LARKI over and above the Customer Fees in accordance with these Terms and Conditions or as otherwise agreed by the Customer.

Applicable Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the jurisdiction and includes the common law and equity as applicable from time to time.

Business Day means a day that is not a Saturday, Sunday or public holiday in the jurisdiction in which the Site is Located.

Confidential Information means all or any information concerning the business or affairs of a party, whether or not recorded in a material form, which is marked as being confidential or which, from its content or format, ought to reasonably be treated as being confidential and is not generally made available to the public.

Customer Data means data or information owned by the Customer and provided to LARKI under or in connection with Customer's use of the Platform (including in a Survey Request) to obtain Deliverables.

Customer Fees means the price payable by the Customer to LARKI for subscription access to the Platform and/or receipt of the Deliverables.

Customer (also referred to as **you**, in these Terms and Conditions) means a person or legal entity who uses the Platform and includes a person or legal entity who submits a Survey Request to LARKI or makes a purchase from LARKI.

Data Supplier means an independent third party which provides Third Party Data to LARKI for the purpose of inclusion in the Platform and/or a Deliverable.

Deliverables means, for example, photographs, surveys, diagrams, drawings, documents, point clouds, and three dimensional models regarding, for example, land surveying, spatial, architectural, environmental, property and/or planning data, information, and/or knowledge and may include Third Party Data and Third Party Services (sourced from a Technology Provider) intended to be conveyed to the Customer in consideration of the Customer Fees.

Deposit means an advance payment (representing part of the Customer Fees) made by the Customer on or around the time at which Customer commits to a Survey Request.

GST means any tax including any additional tax imposed on the supply of or payment for goods or services which is imposed or assessed under the A New Tax System (Goods and Services Tax) Act 1999 and all related and auxiliary legislation.

Intellectual Property means all intellectual property and proprietary rights (whether registered or unregistered) including Confidential Information, algorithms, applications, artwork, blocks, business names, code, concepts, copyright, designs, digital files, digital models, discoveries, drawings, financial information, ideas, inventions, instructions, know-how, logos, marketing information, methods, moral rights, patent applications, patents, patterns, plates, pricing, processes, products, proposals, services, service marks, software, systems, specifications, tag

lines, templates, training, trade secrets, and trademarks.

LARKI means Larki Pty Ltd, (ABN 35 615 835 660) and, where the context requires, its contractors, agents and employees.

Platform means the online software platform which aggregates and makes available Services and data provided by LARKI and Technology Partners for use and acquisition by Customers.

Purpose means (and is limited to) the purpose for which the Deliverables are to be used, as stated in the Survey Request, Website and/or Platform, including but not limited to architectural design, urban design, landscape design, property development, urban planning, authority assessments, construction, engineering, physical asset registers, or facility management.

Scope Area means the geographic or spatial extent forming the subject of a Survey Request which will include all or part of the Site and may extend beyond the Site.

Services means the provision of the Platform and additionally could include visualisation services and services performed by LARKI or LARKI's Technology Partners or contractors (including, where applicable a Site visit).

Site Access Period means the day and time that LARKI, (or its representatives or Technology Partners) will make a Site visit in order to perform the Services and supply Deliverables.

Site means the location (designated according to property title, street address, or map reference) over which the Customer has authority to give LARKI and/or a Technology Partner access to perform the Services and/or Deliverables.

Subscription Term means the period of time for which you agree to commit to pay for and receive access to the Platform and includes both the Initial Term and the Renewal Term, as the context requires.

Survey Request means a brief or instruction submitted by the Customer via the Platform, (or in some cases, by email or other written means), requesting LARKI to provide one or more specified Deliverables. A Survey Request could be a written document, proposal or information provided by LARKI to the Customer and subsequently acknowledged and confirmed by the Customer as a correct record of the Deliverables requested by the Customer.

Technology Partner means a third party (including a Data Supplier) who provides Services or data to the Customer which are made accessible to the Customer on the Platform and/or as Deliverables.

Terms and Conditions means these Terms and Conditions as amended by LARKI from time to time.

Third Party Data means data, information or other materials supplied by a Data Supplier.

Third Party Services means Services provided by a Technology Partner.

Website means the LARKI website located at www.LARKI.info, www.LARKI.com.au, 3dlandsurveying.com.au (or other websites managed by LARKI from time to time).

2 Introduction

- 2.1 These Terms and Conditions govern use of the LARKI platform (the **Platform**). The Platform is provided by **Larki Pty Ltd** (ABN 35 615 835 660) (**LARKI, we, us, our**). Our customers may be architects, surveyors, property developers, construction industry professionals and others who wish to obtain survey data globally (**Customer, you, your**).
- 2.2 The Platform is available at www.LARKI.info, www.LARKI.com.au, 3dlandsurveying.com.au (or other websites managed by LARKI from time to time).
- 2.3 The Platform enables a Customer to register on the Platform and subscribe to receive a range of different types of survey data and services (in many cases sourced by LARKI from Technology Providers) with respect to a geographic site which has been specified by the

Customer from time to time.

- 2.4 A Customer can purchase Deliverables by completing a Survey Request. These Terms and Conditions together with a valid Survey Request (if applicable) form a binding agreement (the **Agreement**) between LARKI and the Customer.
- 2.5 The Customer acknowledges that:
- (a) the Platform has not been developed to meet the individual requirements of the Customer; and
 - (b) it has had the opportunity to evaluate and satisfy itself about the features and operation of the Platform and the Deliverables.
- 2.6 LARKI may enhance and/or alter the features of the Platform in its absolute and unfettered discretion at any time for the purpose of making improvements to the Platform, the Services and the Deliverables.
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3 Updates to these Terms and Conditions and Policies

- 3.1 We may change these terms at any time. Some of the Deliverables are provided by Technology Partners and if they change their terms then we may pass those changes on to you. If we make changes, we will take reasonable steps to let you know about the changes.
- 3.2 If you access the Platform following any amendment to these Terms and Conditions you will be taken to have agreed to comply with the Terms and Conditions as changed. If you do not agree with changes to the Terms and Conditions, you can choose to close your account with us and not use the Platform and/or Deliverables.
- 3.3 The Agreement is not intended to address every issue raised by the use of the Platform. LARKI reserves the right to:
- (a) introduce, by posting on the Platform and/or Website, Policies to address issues that do arise with the use of the Platform; and
 - (b) change previously posted Policies at any time, effective upon the posting of the modified policies on the Site.
- 3.4 It is the Customer's obligation to ensure that it complies with policies and monitors the Platform and Website for advice about any change to a policy. Your failure to comply with our policies and procedures may result in suspension and/or termination of your right to use the Platform and/or Deliverables.
- 3.5 LARKI may offer new features, functionality, services, data or information through the Platform during the Subscription Term. Such new features and functionality, if offered, are offered subject to these Terms and Conditions (as updated from time to time).
- 3.6 LARKI acts as an aggregator of Third Party Data and Third Party Services which originate with our Technology Providers. In some cases the Deliverables may be comprised of Third Party Data and/or Third Party Services. In that case, use of those Deliverables by the Customer is subject to:
- (a) these Terms and Conditions; and additionally
 - (b) the terms imposed by the relevant Technology Partner.
- 3.7 For more information about terms imposed by a Technology Partner refer to clause 21.
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4 Registration on the Platform

- 4.1 To access and use the Platform as a Customer, you need to register and open an account with LARKI and confirm that you agree to comply with these Terms and Conditions. Even if you use our Platform prior to registration as a Customer and prior to making a Survey Request, that use

is subject to all of these Term and Conditions.

- 4.2 Once the Customer's account has become activated:
- (a) the Customer will then have full use and enjoyment of the Platform subject to payment of Customer Fees calculated in accordance with our fee structure, available on LARKI's Website or provided to you by LARKI in writing from time to time; and
 - (b) LARKI grants to the Customer the right to access and use the Platform in accordance with the terms of this Agreement.
- 4.3 You warrant that all information required to be provided to us when you register as a Customer and during the time you remain registered as a Customer or using the Platform is true accurate, current and complete.
- 4.4 If you are accessing the Platform to purchase Deliverables on behalf of a third party, you warrant:
- (a) that you are authorised to do so by that third party;
 - (b) you will commit that third party to be bound by these Terms and Conditions; and
 - (c) that you will be primarily responsible to fulfil these Terms and Conditions.
- 4.5 When the Customer makes a Survey Request to LARKI, the Customer agrees to be bound by:
- (a) these Terms and Conditions;
 - (b) any Special Conditions which are expressed in the Survey Request; and
 - (c) any applicable terms imposed by a Technology Partner with respect to the Services and/or Deliverables which originate with that Technology Partner.
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5 Customer's Responsibilities

- 5.1 The responsibilities in this clause apply when you are using the Platform and purchasing and receiving Deliverables, unless otherwise stated.
- 5.2 You must:
- (a) comply with all Applicable Laws when using the Platform and purchasing Deliverables;
 - (b) bear all costs and expenses related to your use of the Platform.
- 5.3 You must not, in relation to your use of the Platform:
- (a) interrupt or attempt to negatively impact or alter the operation of the Platform in any way;
 - (b) engage in any practice which may adversely affect the credibility or reputation of the Platform and/or us;
 - (c) use the Platform in a way that violates Applicable Laws, that violates the intellectual property rights or other rights of LARKI or of any third party (including our Technology Partners), or that is fraudulent, obscene, unprofessional, offensive, misleading or defamatory;
 - (d) reverse engineer, decompile or disassemble the Platform or use the Platform to develop a solution that is the same or substantially similar to the Platform;
 - (e) licence, sell, rent, lease, transfer, assign or otherwise commercially exploit, or otherwise make the Platform available to any third party;
 - (f) except as permitted under this Agreement, modify, reproduce, display, publish, distribute, copy, transmit, perform, license, create derivative works from, transfer, or sell or resell any Deliverables, information, content, software, Service, or other materials made available through the Platform; or
 - (g) engage in any misleading or deceptive conduct or any other conduct that would

contravene the Australian Consumer Law.

- 5.4 In order to use the Platform, you must provide us with certain information about yourself. You must keep our account information true accurate, current and complete. We will handle and store this information in accordance with our [Privacy Policy](#).

6 Platform Availability

- 6.1 We will take commercially reasonable measures to ensure the availability of the Platform however you acknowledge and accept that the Platform relies on third parties (over which LARKI has no control) for many aspects of its operation and availability.
- 6.2 You agree that we will not be liable for any losses suffered by you during any period during which the Platform is not operational.

7 Making a Survey Request

- 7.1 After registering on the Platform or providing Customer name and email to LARKI, a Customer may purchase Deliverables by submitting a Survey Request. LARKI will perform the Services and/or supply the Deliverables requested by the Customer in their Survey Request in accordance with the Scope Area and description provided by LARKI on the Platform or other document provided by LARKI to Customer.
- 7.2 LARKI may provide a proposal via the Platform, a third party proposal web app, email or other written means, which might include additional Special Conditions. Once Customer selects the options they want (or accepts the options suggested for them) and accepts the proposal, then the selected parts of the proposal and the remaining mandatory parts of the proposal become the Survey Request.

8 Deliverables are for Customer Only

- 8.1 Deliverables are provided exclusively for the benefit of the Customer, for the Purpose and for the Site as stated in the Survey Request.
- 8.2 No third party is entitled to use or rely on any Deliverable for any other purpose and/or for any other site unless it has received LARKI's written consent.

9 Customer Fees and Payment

- 9.1 LARKI offers the Platform (and including Services and Deliverables) to Customers using a combination of subscription fees and pay-per-transaction fees under which different pricing is offered for different levels of service and different Deliverables. Customer Fees are calculated in accordance with our pricing structure which is explained on LARKI's Website or by LARKI in writing from time to time. LARKI reserves the right to change the Customer Fees at any time for any reason.
- 9.2 A quotation or proposal (including the Customer Fees quoted therein) notified to Customer will expire within 5 Business Days from the date of the quotation or proposal, unless stated otherwise by LARKI.
- 9.3 The Customer must provide Customer Data as prerequisite for the Platform to calculate the Customer Fees payable with respect to a transaction (including a Survey Request). If the Customer accepts the fee quotation then the Customer must pay the fee for the Services and/or Deliverables specified in the fee quotation for that transaction. Customer is wholly responsible to assess whether to accept the fee quotation or to decline, prior to receiving the Services and/or Deliverables. If the Customer does not accept the fee quotation then no fees are payable and no Services and/or Deliverables will be provided to Customer. The decision whether to accept or decline to proceed with the transaction is entirely at the discretion of the Customer. Once the quotation is accepted by the Customer, all fees and charges payable to LARKI are non-cancellable and non-refundable, subject to Customer's rights under any non-excludable

terms.

- 9.4 The Customer is responsible for all Taxes payable on or associated with their purchase.
- 9.5 No refunds, whether full or partial, will be issued for any transaction, (subject to Customer's rights under any non-excludable terms according to Applicable Law).
- 9.6 The Customer must pay the Customer Fees in full (including GST) by direct debit, LARKI's provided online payment portals or other payment method instructed or approved by LARKI. Full payment of the Customer Fees must be received by LARKI before LARKI is obliged to provide the access to the Platform, Services or Deliverables to the Customer, unless otherwise agreed by LARKI in writing.
- 9.7 Customer is solely responsible for any additional payment processing fees added for Paypal, credit cards or other payment methods that attract additional costs.
- 9.8 If Customer Fees have not been received by LARKI beyond the agreed payment due date, then a late payment charge will be payable at the rate of 1.5% per month compounded monthly (annual equivalent rate of 19.56%), or other amount quoted by LARKI, on any part of the invoice that remains unpaid by the Customer from the date payment is due until the date such payment is received by LARKI. Additional costs incurred by LARKI (including for debt recovery) associated with overdue payments must also be paid by the Customer.
- 9.9 Additional Fees must be paid by the Customer to LARKI if Services, Deliverables, work, or equipment are requested by Customer that are outside of Survey Request or Site Access Period as agreed by the Customer or reasonably outside of LARKI's control such as weather, natural disasters, war or pandemics. Additional Fees will be charged at:
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|-----|----------------------------|-----------|----------------------|
| (a) | Director | \$220.00 | per hour plus GST; |
| (b) | Manager | \$180.00 | per hour plus GST; |
| (c) | Site Surveyor | \$160.00 | per hour plus GST; |
| (d) | Modeler / Draftsperson | \$100.00 | per hour plus GST; |
| (e) | Assistant | \$70.00 | per hour plus GST; |
| (f) | Site Data Collection | \$1000.00 | per day plus GST; or |
| (g) | otherwise stated by LARKI. | | |
- 9.10 Any additional time needed to perform the Services for the Site and/or Scope Area beyond the agreed Site Access Period factored into the original Customer Fees will be charged as an additional Site Data Collection which is an additional whole day.
- 9.11 In addition to the Customer Fees, the Customer will pay for, or reimburse LARKI for any out-of-pocket expenses or disbursements in providing the Services and/or Deliverable, including but not limited to:
- (a) fees, taxes, levies or charges paid to authorities;
 - (b) services for access (such as working with children, security, health checks or inductions);
 - (c) preparation of submissions and attendance at Tribunals;
 - (d) special presentation material, videos and renderings;
 - (e) rental of special equipment (such as tripods higher than standard 2 metres or cherry

- pickers);
 - (f) rental of safety equipment (such as scaffolding or gas masks);
 - (g) traffic management;
 - (h) photographic or video records;
 - (i) external hard-drives;
 - (j) telephone calls other than local;
 - (k) postage, air freight and courier services;
 - (l) travel more than 50km from a LARKI office;
 - (m) accommodation;
 - (n) special processes not normal to LARKI; and
 - (o) printing.
- 9.12 To the extent any individual expense is greater than \$50, LARKI will seek approval from the Customer in advance of incurring the expense. The Customer should note that a delay to approval of these expenses or paying for them may incur delays and/or Additional Fees.
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10 Site Visits, Access to the Site and Scope Area

- 10.1 This clause 10 applies to the purchase by the Customer of Services and/or Deliverables which require attendance by LARKI or its representative at the Site.
- 10.2 If a Site visit by LARKI or its representative is required in order to supply the Services and/or Deliverables, the Customer is responsible for providing timely and adequate information, such as photographs, plans, and descriptions, for LARKI to understand the Site and Scope Area in order to calculate appropriate Customer Fees, Services and Deliverables. Customer should inform LARKI with sufficient time prior to formulating the Customer Fees if any information, equipment or service is required to gain safe and timely access to the Scope Area and visibility of the subject of the Deliverables or if there are other impediments including (but not limited to): dense vegetation, high fences, hidden areas, areas that need pre-approval for access (working with children, health checks, white-cards, or site induction), areas of restricted access, moving interferences (animals, traffic, people), obstructions (parked vehicles, furniture, bins, signs), privacy issues, ground that is too steep to setup up a tripod, low head room, safety issues, unconventional building elements, or the need for traffic management, scaffolding, tripods higher than standard 2 metres or cherry pickers.
- 10.3 The Customer Fees are based on information provided by the Customer and from information that LARKI can ascertain from quick web searches but is not based on personal attendance at the Scope Area or Site. If LARKI must attend the Scope Area or Site in person on a time outside of the Site Access Period then LARKI reserves the right to charge Additional Fees.
- 10.4 If LARKI make more than three attempts (not more than one each day over a 10 Business Day period) to get the Site Access Period approved,, then the Site Access Period suggested by LARKI will be deemed to have been approved by Customer in order to maintain a timely provision of Services.
- 10.5 Customer will provide timely access to all areas required for LARKI or Technology Partners to perform the Services and/or provided the Deliverables, including all doors, windows, gates and access hatches unlocked and open-able for the duration of the Site Access Period.
- 10.6 Unlocking, security and lock up are the responsibility of the Customer.
- 10.7 Customer is solely responsible to ensure that the Site is safe and there is clear access from ground level and that there is visibility of the subject of the Deliverables in order that LARKI and/or Technology Partners can perform the Services necessary to create the Deliverables

during the agreed Site Access Period.

- 10.8 Customer must pay to LARKI its reasonable out-of-pocket costs associated with any safety or access work or equipment to gain safe and timely access to the Scope Area and Site and visibility of the subject of the Deliverables.
- 10.9 If LARKI and/or Technology Partners cannot get access to the Site and Scope Area during the Site Access Period or there is more than a total of 30 minutes waiting time in aggregate for LARKI and/or Technology Partner to gain access or visibility to the Site and Scope Area, then Deliverables will be issued to the extent possible (which may include reduction in Deliverables) within the given time, access and visibility and Customer will pay the full Customer Fees and/or LARKI reserves the right to charge Additional Fees.
- 10.10 Unless otherwise stated by LARKI, the quoted Customer Fees are assumed to include a Site Access Period for no more than a total of seven hours on the same Business Day anytime from 7am to 5pm only. If an additional day or time is necessary (in the opinion of LARKI) then LARKI will discuss with Customer and LARKI reserves the right to charge Additional Fees or limit the Services and/or Deliverables to those that could be performed within the agreed Site Access Period.
- 10.11 Customer can cancel or amend the Survey Request or Site Access Period if also agreed by LARKI in writing, however, Customer must pay for any costs already incurred by LARKI to provide the Platform, Services, or Deliverables at the time of cancellation or amendment and if the time from the start of the Site Access Period is:
- (a) less than 24 hours then the Customer will forfeit the greater of the Deposit or \$1000+GST; or
 - (b) if greater than 24 hours LARKI has the right to charge \$100+GST cancellation fee.
- The cancellation fee is to cover preparation, resourcing, reallocation, associated costs and/or lost future earnings. It is therefore important to ensure that details submitted in a Survey Request are correct.
- 10.12 Customer may submit an additional Survey Request at any time and LARKI may (in its discretion) agree to provide the additional Services and/or Deliverables.
- 10.13 The Survey Request cannot be transferred or assigned to a third party unless agreed by both the Customer and LARKI in writing.
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11 Prohibition on Contacting Technology Partners

- 11.1 Customer Fees may include: bulk, wholesale or negotiated discount arrangements between Technology Partners and LARKI, LARKI's management time, and factor in LARKI's ability to resell aspects of the Deliverables that are not private or can be captured from public areas.
- 11.2 If the Customer contacts a Technology Partner directly while you using the Platform or within 2 months of entering into a Survey Request, causing LARKI to lose Technology Partner arrangements, time, and/or the ability to resell data, then the Customer agrees to pay LARKI an additional 100% of the Customer Fees on top of the Customer Fees as a genuine pre-estimate of LARKI's lost future earnings. LARKI reserves the right to add Additional Fees for the time spent managing and negotiating with Technology Partner.
- 11.3 In the event that the Customer requires further information, has queries relating to the Deliverables or is unsatisfied, the Customer should contact LARKI. LARKI contact details can be found on the Website and LARKI email footers. The Customer must not contact the Technology Partner directly, unless authorized by a LARKI Director in writing.
- 11.4 Should LARKI's Technology Partner contact the Customer for any reason, the Customer should refer the Technology Partner to LARKI to avoid omissions, miscommunication or Additional Fees.
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12 Customer Data

- 12.1 Customer warrants to LARKI that it owns or has all the necessary legal rights to share Customer Data to LARKI or the Platform where it will be used by LARKI and Technology Partners in order to provide the Deliverables.
 - 12.2 Customer hereby authorizes LARKI to use Customer Data to provide the Service and Deliverables and otherwise meet LARKI's obligations under this Agreement, including, where applicable, contracting with a Technology Partner or contractor to enable a Site visit or other Services and Deliverables requested by the Customer in accordance with this Agreement.
 - 12.3 Customer hereby warrants that, to the extent required by applicable Privacy Laws and the parties' respective obligations under this Agreement, Customer has provided all proper notices under Privacy Laws and obtained from its personnel, customers and all legally-required third parties all rights and permissions legally required for Customer to grant LARKI the right to use the Customer Data and perform the Services in the manner contemplated by this Agreement.
 - 12.4 Except to the extent any data is Customer Data, or Third Party Data, LARKI retains exclusive ownership of all data derived or created in the course of operating the Platform or providing the Deliverables.
 - 12.5 LARKI has no obligation to retain Customer Data or Third Party Data after providing the Deliverables (including Services) for any specific transaction. LARKI may permanently delete any Customer Data or Third Party Data from the Platform immediately and without further notice.
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13 Confidentiality and Privacy

- 13.1 Each party must treat as confidential, the Confidential Information of the other party.
 - 13.2 The party who receives Confidential Information from the other party must not without the prior written consent of the other party:
 - (a) use that Confidential Information except in performing its obligations or exercising its rights under this Agreement or as otherwise specified in this Agreement; or
 - (b) disclose it to any person except its Personnel and then only to those Personnel for the purpose of effecting this Agreement.
 - 13.3 The exceptions are where:
 - (a) disclosure is required by Law;
 - (b) Confidential Information is in the public domain through no fault or action of the recipient or its Personnel; or
 - (c) Confidential Information was received by the recipient on a non-confidential basis from a third party who is entitled to disclose it.
 - 13.4 We will treat your personal information in accordance with Applicable Laws, including the *Privacy Act 1988* (Cth).
 - 13.5 We will comply with the requirements of Applicable Laws in the event of a data breach.
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14 Limitation of Liability

- 14.1 Terms, conditions, warranties and guarantees implied by Applicable Law, which cannot be excluded, restricted or modified apply to this Agreement to the extent required by that Law.
- 14.2 LARKI excludes to the extent permitted by Applicable Law all other terms, conditions, warranties, of merchantability or fitness for any particular purpose which might be implied into this Agreement.
- 14.3 Subject to clause 14.1, if LARKI supplies access to the Platform or Deliverables to a Customer who is not covered by the ACL, LARKI supplies on an "as is" basis. LARKI agrees to use reasonable commercial endeavours to ensure accuracy and reliability of the Deliverables, however LARKI does not warrant the accuracy of the Deliverables (including Third Party Data),

- and is not liable for defects caused through inaccuracies, omissions, or other technical failure associated with data supplied by LARKI, a Technology Partner, a third party or by the Customer.
- 14.4 Customer acknowledges that in entering this Agreement, it has not relied on any promise, warranty, or representation not expressly set forth in this Agreement.
- 14.5 LARKI will not be liable to the Customer in respect of any Indirect Loss, consequential or special losses (including loss of profit, holding costs, loss of business opportunity and payment of liquidated sums or damages under any other agreement).
- 14.6 For the purposes of clause 14.5, the term Indirect Loss means Losses which do not arise naturally (that is, according to the usual course of things) from the relevant breach of these Terms and Conditions (including loss of profits or revenue, loss of goodwill or reputation, loss of anticipated benefits or savings, loss of any prospect or business opportunity, loss of production or other business interruption loss).
- 14.7 Customer indemnifies and will hold harmless LARKI, our employees, agents, Technology Partners and contractors (separately and together, **those indemnified**) from any loss, damage, costs and/or expenses incurred by those indemnified and arising from:
- (a) negligent or unlawful conduct of the Customer, or their respective employees, agents or contractors;
 - (b) a breach of these Terms and Conditions by the Customer, and the use of the Deliverables for anything other than the Purpose;
 - (c) the death or illness of, or personal injury to, any individual in connection with any of the Services and/or Deliverables; or
 - (d) the loss or destruction of, or damage to, any tangible property arising from or in connection with the Services and/or the Customer's use of the Deliverables, except to the extent such Loss arises from our wilful misconduct.
- 14.8 We are not responsible for any communication, interaction or relationship between you and any other user of the Platform, whether or not it occurs on the Platform or by another means.
- 14.9 Subject to clause 14.1, our total and aggregate liability for loss suffered or sustained by you arising from your use of the Services, Platform, or Deliverables:
- (a) whether arising as a result of breach of contract, in tort (including negligence) or under statute; and
 - (b) whether or not arising pursuant to an indemnity in these Terms and Conditions,
- is limited, at our option, to the provision of the Deliverables again or paying to provide the Deliverables again.
- 14.10 Subject to clause 14.1, in no circumstances will LARKI's liability to the Customer exceed the Customer Fees actually received by LARKI from the Customer for the Deliverables which form the basis of any such liability.
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15 Measurement Accuracy and Risk

- 15.1 The Customer must make enquiries and be satisfied with:
- (a) the level of Professional Indemnity or other insurance cover, which may include no insurance in certain circumstances, of LARKI and Technology Partners;
 - (b) LARKI's limits of liability as set out above;
 - (c) the fitness for purpose of the Services and/or Deliverables provided by LARKI or Technology Partner.
- 15.2 LARKI does not warrant the performance, coverage or continued availability of the Platform and Deliverables.
- 15.3 With respect to data on the Platform or Deliverables comprised of Third Party Data, the

Technology Partner (and not LARKI) is exclusively responsible for defects in that Third Party Data.

- 15.4 Customer is solely responsible to implement its own error check and verification measures with respect to Customer Data, Services and the Deliverables. In some cases a Technology Provider may prohibit or disclaim all liability if their Third Party Data is used in a critical application. **Customer must ensure that Deliverables intended for use in a critical application are independently checked and verified prior to use.**
- 15.5 Some Deliverables provided by LARKI are more accurate than others. As a guide, subject to the data being accurately geo-positioned, in order of usually the most accurate at the top to least accurate at the bottom (to be confirmed the Customer for critical applications):
- (a) tripod captured laser scan; then
 - (b) tripod captured photogrammetry; then
 - (c) drone captured laser scan; then
 - (d) drone captured photogrammetry; then
 - (e) car captured laser scan; then
 - (f) car captured photogrammetry; then
 - (g) Building Information Model; then
 - (h) 2D line drawing; then
 - (i) helicopter captured laser scan; then
 - (j) helicopter captured photogrammetry; then
 - (k) plane captured laser scan; then
 - (l) plane captured photogrammetry;
 - (m) unless otherwise stated by LARKI.

Where more accurate Deliverables are supplied, the Customer must use the more accurate Deliverable when higher accuracies are required. If the Customer is unsure about the order accuracy of data on the Platform or Deliverables then contact LARKI for clarification. Customer is solely responsible to be specific about their accuracy requirements as part of the Survey Request. In the absence of specific accuracy requirements notified to, and agreed to by LARKI in the Survey Request, any shortfall in accuracy of the Deliverables is deemed not to be a defect in the Deliverables.

16 Intellectual Property Rights

- 16.1 No Intellectual Property rights are assigned or transferred to the Customer through the provision of the Platform, Services or Deliverables to the Customer under this Agreement. LARKI (or, if applicable, LARKI's Technology Partner) retains all right, title and interest in and to their Intellectual Property rights in Platform, Services and Deliverables.
- 16.2 Subject to full payment of all Customer Fees and compliance with these Terms and Conditions, LARKI grants to the Customer a limited license to use the Platform and the Deliverables solely for the Purpose and solely in respect of the Site stated in the Survey Request. Customer is not permitted to use, reproduce, distribute or sublicense the Platform and/or Deliverables (in whole or in part), or any part of LARKI's Website or LARKI's promotional materials, other than for the Purpose.
- 16.3 The Customer grants to LARKI a license of such Intellectual Property rights in Customer Data as are necessary to enable LARKI to provide the Platform and Deliverables in accordance with these Terms and Conditions and the Survey Request.
- 16.4 The Customer grants to LARKI a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Platform any general suggestions, enhancement requests,

recommendations or other feedback provided by the Customer.

- 16.5 Third Party Data or Third Party Services which are provided to the Customer may be subject to additional terms and limitations under a third party end user licence imposed by the Technology Partner. Customer, as end user, must comply with the limitations imposed on their use of that Third Party Data or Third Party Services. For limitations on Third Party Data or Third Party Services are described in clause 22 onwards of these Terms and Conditions and otherwise in links to the end user terms provided by the Technology Partner from time to time.

17 Term and Renewal for Customers Subscription

- 17.1 LARKI offers various different types of subscription plans for accessing the Platform. Those subscription plans are explained on LARKI's Website or by LARKI in writing from time to time.
- 17.2 Customer's initial Subscription Term (**Initial Term**) will be specified when you register for an account, and your Subscription Term will automatically renew after a period stipulated in your Survey Request or Account Registration, usually monthly or annually (the **Renewal Term**). If you add Services or Deliverables during the Subscription Term, the fees for these additional Services will be pro-rated and they will renew along with your subscription, unless otherwise indicated in your Account Registration.
- 17.3 If the pricing for any Renewal Term is not otherwise specified, then LARKI's standard pricing as at the date of renewal will apply, as shown on LARKI's Website or by LARKI in writing from time to time.
- 17.4 If you do not wish to renew your subscription then, you must notify us in writing or cancel your Account (using the functionality provided for that purpose on the Platform) within the period which is at least thirty (30) days before the end of your Initial Term or the Renewal Term (as applicable).
- 17.5 If you validly notify us that you do not wish to renew the Subscription then the Subscription Term will end immediately before the next renewal date. The subscription cannot be cancelled early. We do not provide refunds if you decide to stop using the Platform during your Subscription Term.
- 17.6 Subject to clause 18, this Agreement may not otherwise be terminated prior to the end of the Subscription Term.

18 Termination for Cause

- 18.1 Either party may terminate this Agreement for cause,
- (a) upon thirty (30) days' notice to the other party of a material breach if such breach is capable of cure and remains uncured at the expiration of such period; or
 - (b) immediately, if the material breach is not able to be cured or if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, liquidation or assignment for the benefit of creditors.
- 18.2 We reserve the right to suspend or terminate your right to use the Platform if, at any time, you breach these Terms and Conditions, or if we suspect, on reasonable grounds, that you have, might or will commit a breach of this Agreement. We will not be liable to you or any third party for any claims or damages arising out of any termination or suspension or any other actions taken by us in connection with such termination or suspension.
- 18.3 LARKI may also terminate this Agreement immediately if we determine that you are acting, or have acted, in a way that has or may negatively reflect on or affect us, our prospects, or our customers.
- 18.4 If you terminate this Agreement for cause, we will refund any prepaid but unused fees covering use of the Platform after termination. If we terminate this Agreement for cause, you will promptly pay all unpaid fees due through the end of the Subscription Term. Fees are otherwise

non-refundable.

19 Access to Customer Data or Deliverables After Termination or Expiration

- 19.1 It is your responsibility to ensure that Customer Data or Deliverables, if stored on the Platform, is regularly duplicated and stored separately by you so that it is accessible to you after termination or expiration.
- 19.2 After this agreement is terminated or expires, you may not be able to gain access to data stored on the Platform, and the data may be deleted.
- 19.3 We may or may not (in our absolute and unfettered discretion) provide you the opportunity to retrieve data (if available) after termination or expiration.

20 General

- 20.1 We reserve the right to monitor your use of the Platform for the purpose of ensuring that the Platform is functioning as we intended, and that Customers are complying with these Terms and Conditions.
- 20.2 Any waiver by LARKI of any of these Terms and Conditions must be in writing signed by LARKI and will be effective only to the extent specifically set out in the waiver.
- 20.3 Time is of the essence in relation to all the Customer's obligations under these Terms and Conditions.
- 20.4 If any provision or part of a provision of these Terms and Conditions is found to be unenforceable, it is to be severed from these Terms and Conditions and will not affect the operation or enforceability of the remaining provisions.
- 20.5 This document is governed by the federal and state laws of Australia, and the parties submit to the non-exclusive jurisdiction of the courts of that state in which the Site exists.
- 20.6 These Terms and Conditions, the Survey Request, and the terms imposed by the relevant Technology Partner constitute the complete agreement between LARKI and the Customer in relation to the supply of the Services and the Deliverables by LARKI to the Customer.

21 Technology Partners – Their Terms.

- 21.1 LARKI acts as an aggregator of Third Party Data and Third Party Services which originate with our Technology Providers. In some cases the tools and data on the Platform and Deliverables may be comprised of Third Party Data and/or Third Party Services. In that case, use of those tools and data on the Platform and Deliverables by the Customer is subject to:
 - (a) these Terms and Conditions; and additionally
 - (b) the terms imposed by the relevant Technology Partner.
- 21.2 When you use the Platform (and if you choose to use the Third Party Data and Third Party Services) the requirements, restrictions, disclaimers and limitations imposed by those Technology Providers will apply to you, in relation to their respective Third Party Data and Third Party Services.
- 21.3 For your convenience, LARKI has set out on LARKI's Website, or provided to you by LARKI from time to time, a list of the Technology Providers whose terms you are required to comply with. Technology Providers and their respective terms of supply may change from time to time.
- 21.4 The following clauses (which are not exhaustive) are provided from an abundance of caution so that you can be aware of some of the terms which a Technology Provider imposes. These clauses are indicative (and are not a substitute) for the precise terms and conditions imposed

by the Technology Provider.

Additional Terms Applicable to Third Party Data & Third Party Services Sourced from Technology Providers

22 3D Streetscape Data

22.1 If Deliverables requested by you in the course of your use of the LARKI Platform include 3D Streetscape Data, the following conditions apply to your use of those Deliverables.

22.2 Definitions (3D Streetscape Data)

End Customer means you, the Customer.

Licensed Materials means the 3D Streetscape Data provided by HERE Europe B.V.

Project means the one-time project comprising any or all of the following functions related to a specific real estate site or defined geographic area: existing condition documentation, dilapidation reports, property development feasibility, architecture, landscape architecture, planning, authority assessments, engineering, costing, construction, maintenance, upgrades, asset management and/or operation of real estate, and including similar functions applicable to all stages of the property development lifecycle.

Ordinary Business Activities means, solely in relation to a Project:

- (a) the use of the Licensed Materials to analyse building architecture and surrounding features (such as but not limited to: buildings, doors, windows, roofs, fences, walls, above ground services, pipes, meters, pit lids, powerlines, power poles, signs, roads, curbs, pavements, topography, lawns, gardens, rock, trees and bodies of water) (Feature Surveying); and
- (b) such other business activities directly related to Feature Surveying, which is limited to:
 - (i) combining the Licensed Materials with other data and materials, for example generating 3D Building Information Models (BIM) using the Licensed Materials as a reference; and
 - (ii) changing file format, moving, rotating, scaling, cropping, deleting parts of the Licensed Materials.

22.3 End user is permitted to use the Licensed Materials solely in connection with the Project and in accordance with its Ordinary Business Activities.

22.4 All right, title, and interest in and to the Licensed Materials (including any information comprising ideas, suggestions, complaints, relating thereto) are the property of HERE or its licensors.

22.5 No ownership of any Intellectual Property Rights relating to the Licensed Materials, HERE Marks or any other product, service, information or material provided by HERE to Customer is assigned or transferred to Customer. The structure, organization, and code of the Licensed Materials and the products and services provided by HERE are the valuable trade secrets and Confidential Information of HERE, its licensors and/or Affiliates.

22.6 To the extent permitted by law the Licensed Materials and any HERE products and HERE services are provided on an "as is," and "as available" basis with all defects. HERE, its affiliates and licensors make no warranty that the Licensed Materials or service will be uninterrupted, secure, or error free, or that defects will be corrected. Except as provided in the Agreement here, its affiliates and their licensors specifically disclaim, to the maximum extent permitted by law, any representations or warranties, express, implied, or statutory, regarding the licensed materials or service, including any implied warranty of merchantability, fitness for a particular purpose, non-infringement, title or any implied warranties arising from law, course of dealing, performance or otherwise. HERE is not responsible for and will have no liability for hardware,

software, technology, or other items or any services not provided by HERE.

23 3D Viewer Web App

- 23.1 If Deliverables requested by you in the course of your use of the LARKI Platform include the 3D Viewer Web App, the following conditions apply to your use of those Deliverables.
- 23.2 You warrant that you own or have all necessary rights, licenses or permissions to supply the Customer Data to Pointerra for the purpose of their 3D Viewer Web App.
- 23.3 When you upload, submit or store Customer Data to or through the 3D Viewer Web App, you grant Pointerra a worldwide license to use, host, store and reproduce the Customer Data for the limited purpose of operating, promoting, and improving their 3D Viewer Web App. This license continues even if you stop using their 3D Viewer Web App, unless you delete the Customer Data.
- 23.4 Disclaimers
- (a) Data processing.
 - (b) Pointerra's processing methods for the 3D Viewer Web App may result in the removal or alteration of some data from the Customer Data. For all use cases it is recommended that you refer to the original source data.
 - (c) Variable survey methods.
 - (d) While Pointerra makes all reasonable efforts to ensure the meta data relating to each data set is current, Pointerra does not warrant the completeness, currency, or accuracy of the meta data.
 - (e) Service is advisory only.
 - (f) You acknowledge and agree that Pointerra's 3D Viewer Web App is only advisory in nature. Pointerra does not itself collect or create the 3D point cloud data or other data that are displayed via the 3D Viewer Web App. You must satisfy yourself that the data sets you view or access via the 3D Viewer Web App are suitable for your specific purposes.
 - (g) Accuracy variation.
 - (h) You may in some cases be viewing a summarized view of the data and you may not be interacting with the individual point, line, surface or area values.
 - (i) Not for use in critical endeavours.
 - (j) You must not use the 3D Viewer Web App for high-risk activity, including without limitation:
 - (i) rail, air, marine, or space travel;
 - (ii) lifesaving, life critical or emergency response situations;
 - (iii) insurance underwriting;
 - (iv) critical health and safety control equipment; or
 - (v) any purpose or use for which the fidelity or accuracy of the source data is of critical importance.
- 23.5 You indemnify Pointerra from and against all liabilities and reasonable expenses (including but not limited to attorney fees), judgments, or penalties that Pointerra incurs as a result of any claim made against Pointerra by a third party that the Customer Data infringes the intellectual property rights of that third party. You will notify Pointerra immediately in the event if you become aware of any breach (or potential breach) of third party intellectual property rights.