

TM Group (UK) Limited

General Terms

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1. Definitions and Interpretation

1.1 In these General Terms, the following words and expressions shall have the meaning attributed to them where the context so permits:

- (a) "**Agreement**" has the meaning ascribed to it in Section 3.3(b).
- (b) "**Authorised User**" means an organisation of Professionals (including a sole practitioner practice) that has been accepted by Us and whose account has been activated in accordance with Section 3.
- (c) "**Case Details**" means the screen displaying the details of the Property Transaction on the TM Website.
- (d) "**Case Cost Summary**" means the screen displaying pricing information for the Property Transaction on the TM Website.
- (e) "**Case Plan**" means a plan using OS MasterMap ® or an uploaded plan identifying the property or site boundary of the property.
- (f) "**Client**" means individuals who have been provided access to Search Results or Data Feeds by a Professional for the purposes of conducting a Property Transaction.
- (g) "**Controller**", "**Data Subject**", "**Personal Data**", "**Processor**" and **processing** shall have the respective meanings given to them in applicable Data Protection Laws from time to time (and related expressions, including **process**, **processed**, **processing**, and **processes** shall be construed accordingly) and **international organisation** and **Personal Data Breach** shall have the respective meanings given to them in the GDPR.
- (h) "**Data**" means information input into the Service using an Authorised User account.
- (i) "**Data Feed**" means an ancillary electronic data feed that may be sent to Us by the Third Party Data Providers together with a Search Result and used to display Search Result content on screen;
- (j) "**Data Protection Laws**" means, as binding on Us and You or the Services (i) the Directive 95/46/EC (Data Protection Directive) and/or Data Protection Act 1998 or the GDPR; (ii) any laws which implement any such laws; and (iii) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing.
- (k) "**GDPR**" means the General Data Protection Regulation (EU) 2016/679.
- (l) "**Intellectual Property Rights**" means all intellectual property rights and industrial property rights of any kind including patents, patent applications, copyright, know-how, technical and commercial information, design (whether registered or unregistered), design rights, internet domain names, database rights, trade marks, service marks or business names, applications to register any of the foregoing rights, trade secrets and rights of confidence, in each case in any part of the world and whether or not registered or registerable.
- (m) "**Professional**" means any current member of the following bodies: The Law Society, The Law Society of Scotland, The Council for Licensed Conveyancers, The Institute of Legal Executives, The Royal Institution of Chartered Surveyors, The National

Association of Estate Agents and the Ombudsman for Estate Agents Scheme, or other bodies or individuals approved by Us.

- (n) "**Property**" means a parcel or parcels of land for which a Search Request has been ordered and accepted by TM Group.
- (o) "**Property Transaction**" means a transaction regarding a Property for a Client.
- (p) "**Protected Data**" means Personal Data received from or on behalf of You in connection with the performance of Our obligations under this Agreement.
- (q) "**Search Alerts**" are as described in our "Online Help" and "Product Descriptions" sections on the TM Website.
- (r) "**Search Request**" means a request from You to Us, in the form required by Us, for the provision of Services.
- (s) "**Search Result**" means any information, data or materials provided by Us or any Third Party Data Provider in response to a Search Request from You.
- (t) "**Search Wizard Send Searches**" means the screen listing prices on the TM Website payable to Us in accordance with this Agreement.
- (u) "**Services**" means the services that We are able to provide to our customers, the current list of which is as described in Annex 1, via tmconvey (www.tmconvey.co.uk) or other means by which We permit customers, including You, to order them (including via written means).
- (v) "**Standard Time**" has the meaning ascribed to it in Section 2.2.
- (w) "**Third Party Data Providers**" means third parties who license their data to be delivered by Us to You as part of the Services and includes any agent, subcontractor or other third party (excluding its employees) engaged by Us for carrying out any processing activities on Your behalf in respect of the Protected Data.
- (x) "**Third Party Terms**" means the terms of the Third Party Data Providers which can be found at www.tmggroup.co.uk/terms and which, subject to Section 13, are incorporated by reference into the Agreement. References to clauses, paragraphs, sections, terms, and sites/websites and the like in the Third Party Terms are internal references within the relevant Third Party Terms or to the relevant Third Party's own internet site.
- (y) "**tmcore**" means the mapping screens displayed on the TM Website in connection with a Case Plan or when creating a new plan.
- (z) "**TM Group**" means Us and Our subsidiaries including TM Property Searches Limited (www.tmggroup.co.uk).
- (aa) "**TM Group Pricing and Payment Terms**" means the pricing and payment terms for the Services, the current set of which are set out in Annex 2.
- (bb) "**TM Website**" means the www.tmggroup.co.uk website or such other website that replaces it from time to time.
- (cc) "**User(s)**" means individuals registered by the Authorised User under the Authorised User's account for the Services.

- (dd) **"We", "Us", "Our"** means TM Group (UK) Limited.
- (ee) **"You", "Your" or "Yourself"** means the organisation of Professionals (including a sole practitioner practice) entering into the Agreement with us.

1.2 In these General Terms, unless the context clearly indicates another intention:

- (a) a reference to any gender includes other genders and the singular includes the plural and vice versa;
- (b) any reference to a person will include natural persons and partnerships, firms and other such unincorporated bodies, corporate bodies and all other legal persons of whatever kind and however constituted;
- (c) a Section, Annex or Party is a reference to a Section of or an Annex or Party to these General Terms. The Annexes form part of these General Terms and any reference to these "General Terms" includes the Annexes;
- (d) obligations undertaken by more than a single person or company or firm are joint and several obligations;
- (e) a statutory provision includes a reference to the statutory provision as modified or re-enacted or both from time to time and any subordinate legislation made under the statutory provision;
- (f) a document is a reference to the document as from time to time supplemented or varied;
- (g) the headings, sub-headings and marginal notes are for convenience only and will not effect the construction of these General Terms;
- (h) all references to "paragraphs" in the Annexes are references to paragraphs in that specific Annex unless otherwise stated; and
- (i) the words "include", "includes", "including" and "such as" are to be construed as if they were immediately followed by the words "without limitation".

2. **Provision of Services**

- 2.1 We will provide the Services to You, either directly or via members of the TM Group, in accordance with these General Terms.
- 2.2 We will use Our reasonable endeavours to make the Services available for use 24 hours per day, 365 days a year, except that the Services will not be available during periods of routine maintenance which are currently scheduled for Thursday evenings from 6pm onwards ("**Standard Time**"). We will use our reasonable endeavours to inform You about routine maintenance taking place outside the Standard Time up to seven (7) days in advance via a notice on the TM Website.
- 2.3 The Services are available for all Property in England, Scotland or Wales.
- 2.4 We recommend that You undertake training on the use of the relevant Services as soon as reasonably practicable following activation of Your account and upon the introduction of substantial new or enhanced facilities. Upon request We will provide You with an estimate of the costs for that training on the basis of Our then current list prices.

3. Registration

3.1 You will:

- (a) provide true, accurate and complete information that You are required to provide when You register as a user of the Services;
- (b) ensure that each User provides true, accurate and complete information; and
- (c) notify Us immediately of any changes to Your or any User information.

3.2 We may, in Our sole discretion, decline any application from You or a User for registration as a user of all or part of the Services.

3.3 If You are accepted by Us as a user:

- (a) you will become an Authorised User and as such You will receive a user name and password. You, and each User, will be allowed to select an individual password; and
- (b) a contract will come into place between You and Us for the provision of the Services subject to these General Terms (the "**Agreement**").

3.4 You will receive confirmation that Your and each User's account has been activated by e-mail.

4. Payment and Pricing

4.1 The TM Group Pricing and Payment Terms for use of the Services are set out in Annex 2. You must read Annex 2 carefully because when You use particular Services You will be committing to pay the then current price and to make payment using the payment methodology for the particular Service selected.

4.2 We may change the TM Group Pricing and Payment Terms by giving fourteen (14) days advance notice by posting a notice on the TM Website. Following such period, the revised TM Group Pricing and Payment Terms shall replace the then current set.

5. Your Data and Protected Data

5.1 Users of the Services will only have access to information pertaining to their Search Requests.

5.2 The TM Group will collect and process the Data (including personal data) provided by You and Your Users. Our privacy policy (www.tmgroup.co.uk/privacy.html) applies to all personal data the TM Group collect and You will ensure that Your Users are made aware of its terms.

5.3 [The TM Group will also use the Data (including personal data) to communicate changes and additions to the Services, any new services and general marketing about Our products and services to You and Your Users. You and Your Users will be provided the opportunity to opt-out of receiving these communications.]

5.4 Where You or Your Users are disclosing third party personal data You warrant that You have obtained the consent of the data subjects to pass their personal data to Us for the purposes set out in Section 5.3.

Compliance with Data Protection Laws

5.5 The parties agree that You are a Controller and that We are a Processor for the purposes of processing Protected Data pursuant to this Agreement. You shall at all times comply with these

General Terms and all Data Protection Laws in connection with the processing of Protected Data including maintaining all relevant regulatory registrations and notifications as required under Data Protection Laws. You shall ensure all instructions given by You to Us in respect of Protected Data (including the terms of this Agreement) shall at all times be in accordance with Data Protection Laws.

- 5.6 We shall process Protected Data in compliance with the obligations placed on Us as Processors under Data Protection Laws and the terms of this Agreement.
- 5.7 You shall not unreasonably withhold, delay or condition Your agreement to any change requested by Us in order to ensure that the Services and We (and each Third Party Data Provider) can comply with Data Protection Laws.
- 5.8 You warrant, represent and undertake that:
- (a) all data sourced by You for use in connection with the Services shall comply in all respects, including in terms of its collection, storage and processing (which shall include You providing all of the required fair processing information to, and obtaining all necessary consents from, Data Subjects), with Data Protection Laws; and
 - (b) You are satisfied that Our processing operations are suitable for the purposes for which You propose to use the Services and engage Us to process the Protected Data; and We have sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of Data Protection Laws.
- 5.9 Clauses 5.10(b), 5.16, 5.18, 5.19, 5.20 and 5.21 shall apply from when the GDPR applies on 25 May 2018, but not earlier.

Instructions

- 5.10 We shall:
- (a) only process (and shall take steps to ensure Our personnel only process) the Protected Data in accordance with our privacy policy ([INSERT LINK]) and this Agreement (and not otherwise unless alternative processing instructions are agreed between the parties in writing) except where otherwise required by applicable law (and shall inform You of that legal requirement before processing, unless applicable law prevents Us doing so on important grounds of public interest); and
 - (b) without prejudice to clause 5.1, if We believe that any instruction received by Us from You is likely to infringe the Data Protection Laws We shall promptly inform You and be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing provided that to the maximum extent permitted by mandatory law, We shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities arising from or in connection with any processing in accordance with Your instructions following Your receipt of that information.

Security

- 5.11 Taking into account the state of technical development and the nature of processing, We shall implement and maintain the technical and organisational measures to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access in accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Protected

Data to be carried out under or in connection with this Agreement, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, We shall implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned in Articles 32(a) to 32(d) (inclusive) of the GDPR (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of Our systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by Us).

5.12 We reserve the right to update our technical and organisational measures and will not materially decrease the overall security of the Services under this Agreement.

5.13 Any additional technical and organisational measures requested by You shall be at Your cost and expense.

Sub-processing and personnel

5.14 We shall:

- (a) not permit any processing of Protected Data by any agent, subcontractor or other third party (except Our or Our Third Party Data Providers own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Protected Data) without Your written authorisation;
- (b) prior to the relevant Third Party Data Provider carrying out any processing activities in respect of the Protected Data, appoint each Third Party Data Provider under a written contract containing materially the same obligations as under this clause 5 that is enforceable by Us and ensure each such Third Party Data Provider complies with all such obligations;
- (c) remain fully liable to You under this clause 5 for all the acts and omissions of each Third Party Data Provider as if they were Our own; and
- (d) ensure that all persons authorised by Us or any Third Party Data Provider to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.

5.15 You authorise the appointment of Third Party Data Providers to enable Us to deliver the Services to You. If You notify Us in writing of any objections (on reasonable grounds) to our use of a Third Party Data Provider:

- (a) We shall work with you in good faith to make available a commercially reasonable change in the provision of the Services which avoids the use of that Third Party Data Provider; and
- (b) where such a change cannot be made and We choose to retain the Third Party Data Provider, We shall notify You at least 14 days prior to the authorisation of the Third Party Data Provider to process Personal Data and You may discontinue using the relevant services and terminate the relevant portion of the Services which require the use of the proposed Third Party Data Provider immediately upon written notice to Us, such notice to be given by You within 30 days of having been so notified by Us.

Assistance

5.16 We shall (at Your cost):

- (a) assist You in ensuring compliance with Your obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to Us; and
- (b) taking into account the nature of the processing, assist You (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of Your obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.

International transfers

5.17 You agree that We may transfer Protected Data, for the purpose of providing the Services, to countries outside the European Economic Area (EEA), provided all transfers by Us of Protected Data in accordance with this clause 5.17 shall (to the extent required under Data Protection Laws) be effected by way of appropriate safeguards and in accordance with Data Protection Laws.

Audits and processing

5.18 We shall maintain, in accordance with Data Protection Laws binding on Us, written records of all categories of processing activities carried out on Your behalf.

5.19 We shall, in accordance with Data Protection Laws, make available to You such information that is in Our possession or control as is necessary to demonstrate Our compliance with the obligations placed on Us under this clause 5 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by You (or another auditor mandated by You) for this purpose (subject to a maximum of *one* audit request in any 12 month period under this clause 5.19).

5.20 Our compliance with the obligations in clause 5.19 is subject to You:

- (a) giving Us reasonable prior notice of such information request, audit and/or inspection being required by You;
- (b) ensuring that all information obtained or generated by You or Your auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to any supervisory authority or as otherwise required by law);
- (c) ensuring that such audit or inspection is undertaken during normal business hours, with minimal disruption to Our business, a Third Party Data Provider's business and the business of Our customers; and
- (d) paying Us reasonable costs for assisting with the provision of information and allowing for and contributing to inspections and audits.

Breach

- 5.21 If required by Data Protections Laws, We shall notify You without undue delay and in writing (providing the relevant details) on becoming aware of any Personal Data Breach in respect of any Protected Data.

Deletion/return

- 5.22 On the end of the provision of the Services relating to the processing of Protected Data, at Your cost and Your option, We shall either return all of the Protected Data to You or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires Us to store such Protected Data. This clause 5 shall survive termination or expiry of this Agreement.

6. Your obligations

- 6.1 You are responsible for:

- (a) procuring the necessary equipment and software, and paying all charges necessary to access the Services;
- (b) all use, activity and charges associated with or arising out of the use of the Services using Your subscription, user name and/or password or that of any User registered to Your account, including any unauthorised charges or use by an unauthorised third party, and you accept that use of Your user name and password or that of any User registered to Your account shall constitute sufficient authority for Us to perform the Services and be entitled to receive payment for doing so;
- (c) making reasonable inspection of the Search Results and any Data Feed (where applicable) to satisfy Yourself that there are no apparent defects or failures. Save as otherwise provided herein, We will not accept responsibility for any defect or failure notified more than 7 days after You have been provided with the Search Result and/or Data Feed;
- (d) all judgments and decisions that You may make as a result of Your use of any Search Result(s) or Data Feed;
- (e) any Data You transfer or receive from Us or through the Services;
- (f) informing Us of any changes to Your professional situation (for instance, changing employer or ceasing to be a Professional); and
- (g) deploying and maintaining current industry standard virus protection and taking all reasonable precautions to ensure that You do not, and do not allow any third party, directly or indirectly to upload, transmit or distribute computer viruses, worms, malicious codes, macro viruses, Trojan horse or similar programs.

- 6.2 You will not use, or allow any party to use, the Services directly or indirectly:

- (a) for any illegal or malicious purpose;
- (b) in connection with marketing surveys, contests, pyramid schemes, chain letters, junk email, or any duplicative or unsolicited messages (commercial or otherwise);
- (c) to download or otherwise copy, or provide (whether or not for a fee) to a person or entity that was not Your Client or a Professional approved by Us for a particular Search

Request, any Search Result or part of a Search Result, including any Data Feed (if applicable);

- (d) to transmit or upload any material that contains software or other material protected by intellectual property rights, unless You own such rights or have received all necessary consents;
- (e) in a manner that is inconsistent with these General Terms or an abuse of the Services, in each case determined by Us in Our sole reasonable opinion; or
- (f) in a manner that is inconsistent with the Third Party Terms.

6.3 You must not access or attempt to access, or enable a third party to access or attempt to access any part or component of the Services, the TM Website, or any component of any service of a Third Party Data Provider that You are not authorised to access.

6.4 You must not allow any third party other than Users to use Your subscription. You must ensure that all Your Users keep their user names and passwords confidential and do not allow any other person to use their accounts.

7. Indemnity

7.1 You will indemnify and hold Us and Our Third Party Data Providers and Our respective parent companies, subsidiaries, affiliates, officers, employees and agents, harmless from any claim, demand, or damage (including legal fees) asserted by a third party due to or arising out of Your breach of any term of these General Terms or Your breach of Your professional duties.

7.2 You may assume the defence of any claim or proceedings arising from the circumstances anticipated by Section 7.1 provided always that You shall keep Us and Our Third Party Data Providers fully informed of all matters relevant to the progress and settlement of any claim or proceedings. If You do not assume the defence of any such claim or proceedings then We will have the right to take over that defence at Your cost.

8. Our rights

8.1 We may:

- (a) deny You and Your Users access to all or any part of the Services if You or Your Users are in breach of these General Terms; and
- (b) modify or discontinue the Services, either temporarily or permanently, with or without notice to You save for Services in respect of a Property Transaction that you have already ordered. Such modifications shall be subject to these General Terms.

9. Back-Up of content

9.1 The TM Group will retain in archive copies of all Data input into the Services for at least seven (7) years, save that We may prevent any records of Property Transactions from being directly accessible via the TM Website according to our archive policy (Annex 2 Section 4). Should You need to retrieve Data from Our archive You should contact the TM Group in writing and such Data can be reproduced subject to an agreed fee and compliance with Section 10.4.

10. Intellectual Property and Right to Use

- 10.1 You agree and acknowledge that all Intellectual Property Rights in the Services and/or any software, Data, Search Result documents, information, content or other materials which relate to or are developed in connection with the Services ("**Materials**") belong to and will remain the property of the TM Group or the relevant Third Party Data Provider.
- 10.2 You acknowledge that You are permitted to use any Material only as expressly authorised by Us, Our licensors or the Third Party Data Provider and may not copy, reproduce, transmit or distribute such Material outside of the normal course of your transactional work without express written authority, nor are You permitted to create derivative works of such Material without express written authority.
- 10.3 You agree not to (and agree not to assist or facilitate any third party to) distribute or commercially exploit any Material except for the purposes of advising Your Clients and generally in the course of Your business. You may only provide the Search Results and Data Feed (if applicable) to a Client for a directly corresponding Search Request and You shall not make ongoing/multiple uses of Search Results or Data Feeds to populate other unrelated Search Requests or otherwise. You will notify Us immediately after becoming aware of any such distribution or commercial exploitation. Any breach of this provision shall be deemed an irremediable material breach and We shall have the right to terminate the Agreement forthwith in accordance with Section 12.1(c).
- 10.4 Without prejudice to Sections 10.1 to 10.3, You undertake that You will not make or store any copy or copies of the whole or any part of the content of any Search Result or Data Feed save as required for tracking and auditing service performance or for legal or regulatory compliance purposes. For the avoidance of doubt, You shall not use any Data contained within the Search Result or Data Feed in a way which would or could facilitate its use in providing search related information against another property transaction. Any breach of this provision shall be deemed an irremediable material breach and We shall have the right to terminate the Agreement forthwith in accordance with Section 12.1(c).
- 10.5 Trademarks, logos and service marks appearing on the TM Website or any Materials are the property of the TM Group or Our Third Party Data Providers. You are not authorised to use these without the prior written agreement of the TM Group or the applicable third party owner.
- 10.6 User guidelines for the use of the Services will be posted on the TM Website.

11. Warranties and Limitation of Liability

- 11.1 We warrant that:
- (a) the Services We provide under the Agreement will be performed with reasonable skill and care and in accordance with these General Terms;
 - (b) We are authorised to provide the Services as provided in these General Terms;
 - (c) Our provision of the Services in accordance with these General Terms will not infringe any third party rights; and
 - (d) Our provision of Search Results, Data Feeds and other Services will comply with the Search Code as detailed at www.copso.org.uk/searchcode/index.php.
- 11.2 To the maximum extent permitted by law, We make no representations, warranties or conditions of any kind, either express or implied, with respect to a Third Party Data Provider's response to a

Search Request, including any warranty that the responses are complete, accurate, of satisfactory quality, or fit for a particular purpose.

- 11.3 Save as set out in clause 5, We will not be liable in contract, tort, negligence and statutory duty or otherwise, for any loss or damage whatsoever caused by any act or omission of a Third Party Data Provider or inaccuracies in or omissions from any responses provided by a Third Party Data Provider.
- 11.4 The information and data used to generate Search Alerts is derived from publicly available records and other third party sources and We do not warrant the accuracy or completeness of such information or data. The information and data used to generate Search Alerts is derived solely from those sources specifically cited in "Our Online Help" and "Product Descriptions" section on the TM Website and We do not claim that these sources represent an exhaustive or comprehensive list of all sources that might be consulted.
- 11.5 We shall in no event be liable to You for loss of profits or contracts, or any indirect, special, exemplary or consequential loss whether arising from negligence, breach of these General Terms or howsoever else occurring.
- 11.6 Subject to Sections 11.5 and 11.7, You agree that Our liability in contract, tort, pre-contract or other representations arising out of or in connection with each transaction completed under the Agreement shall be limited to £10,000,000 per claim or series of connected claims. This limitation will be supported by appropriate professional indemnity insurance. We will, on request by You, provide You with confirmation that such insurance has been effected. If We are unable to renew such professional indemnity insurance on an "each and every claim" basis and/or there is any material change to the terms of Our professional indemnity insurance We will give You not less than 30 days' notice by email of that fact with details of the said change.
- 11.7 Nothing in these General Terms shall exclude or limit Our liability for death or personal injury due to Our negligence or any liability due to Our fraud or any other liabilities for which liability cannot be excluded as a matter of law.
- 11.8 For the avoidance of doubt, notwithstanding any other provision of these General Terms, the limit of liability in Section 11.6 above shall be an absolute cap and shall not be aggregated with any other liability limits provided outside these General Terms.
- 11.9 Subject to the foregoing provisions, We shall not be liable for any loss or damage sustained by You, any Client or any other third party directly or indirectly whether in contract, tort or otherwise making use of or relying on the Search Results or any Data Feeds (if applicable) including any loss or damage resulting as a consequence of:
- (a) any failure by You to have in place all necessary means of receiving the Search Results and Data Feeds (if applicable) and maintaining appropriate internet access, appropriate email facilities and security measures;
 - (b) any Search Request which on receipt by Us from You is inaccurate or incomplete, illegible, out of sequence or in the wrong form or in respect of the wrong Property;
 - (c) any failure of any Search Request to arrive with Us from You on time or at all; or
 - (d) Your negligent acts or omissions and/or Your failure to comply with Your obligations under these General Terms (including Your failure to review the Search Results in accordance with Section 6.1(c)).

unless and then only to the extent that such loss and damage shall be the direct consequence of Our fraudulent or negligent act or omission and/or Our breach of these General Terms.

- 11.10 As per Our Complaints Procedure, which You can access via a link on the TM Website, should You not be satisfied with Our final response or We have exceeded the response timescales pursuant to Our Complaints Procedure, You may refer Your complaint to The Property Ombudsman Scheme. The Property Ombudsman Scheme's website is www.tpos.co.uk and email address is admin@tpos.co.uk.
- 11.11 We will co-operate fully with The Property Ombudsman Scheme during an investigation and comply with his final decision.

12. Termination

- 12.1 Without prejudice to Our other rights and remedies, We may terminate the Agreement and close Your account forthwith on written notice if:
- (a) You fail to make a payment in accordance with these General Terms;
 - (b) You cease to be a Professional;
 - (c) You have materially breached these General Terms or acted in a manner inconsistent with the spirit of these General Terms;
 - (d) You cease or threaten to cease to carry on Your business;
 - (e) You have a liquidator, receiver or administrative receiver appointed to You or over any part of Your undertaking or asset;
 - (f) You pass or propose to pass a resolution for Your winding up (otherwise than for a bona fide scheme or solvent amalgamation or reconstruction where the resultant entity shall assume all your liabilities) and/or You convene any meeting of Your creditors;
 - (g) You are declared bankrupt or are subject to a bankruptcy petition, or You are wound up by court order or are subject to a winding up petition;
 - (h) You propose, or enter into, any voluntary arrangement with Your creditors;
 - (i) We believe, in Our reasonable opinion, that You are or are likely to become unable to pay Your debts as they fall due;
 - (j) You take or are subject to any steps (including the making of an application or giving of a notice) for the appointment or proposed appointment of an administrator;
 - (k) You are subject to any other proceedings relating to Your insolvency or possible insolvency; or
 - (l) You are subject to any similar action as set out in Sections 12.1(e) to (k) in any jurisdiction because of debt.
- 12.2 We may further terminate the Agreement and close down Your account forthwith without notice (including all user names and passwords of Your Users) if Your user information is or becomes untrue, inaccurate, out-of-date or incomplete.
- 12.3 You may terminate the Agreement at any time by giving twenty-eight (28) days written notice to Us, if you no longer wish to receive the Services from Us.

- 12.4 In the event of termination of the Agreement and close down of Your account at any time Your entitlement to use the Services ceases immediately and all charges incurred become payable immediately.
- 12.5 Notwithstanding our right to terminate the Agreement with You in accordance with Section 12.1(a), We may in our sole discretion have the right to suspend Your and/or Your Users' account instead. Once suspended Your entitlement to use the Services (including the access of any Search Result or Data Feed) ceases immediately unless and until the suspension of the account in question is removed. Upon suspension of Your account, the TM Group shall be entitled to demand immediate payment of all charges incurred up until suspension, and require payment of all such charges as a condition precedent of removing the suspension of the relevant account. In any event, it is entirely at Our discretion as to whether, when and upon what conditions the suspension of the relevant account is to be removed, and We shall be entitled to terminate the Agreement and close down Your account notwithstanding that it is already suspended and shall be entitled for the purpose of termination to rely upon the same ground upon which Your account was suspended.
- 12.6 Sections 5, 7, 10, 11, 16 and 17 shall survive termination or expiry of the Agreement.
- 12.7 Notwithstanding termination, We will fulfil any Search Requests which You have ordered and paid for prior to termination.
- 12.8 We may close down, suspend or disable any User accounts that have been dormant or inactive for more than thirteen (13) months.

13. Precedence

- 13.1 If there is any inconsistency between the provisions of these General Terms and any other applicable terms and conditions, that inconsistency will be resolved according to the following descending order of priority:
- (a) these General Terms;
 - (b) any applicable Third Party Terms; and
 - (c) any other relevant terms and conditions applicable to the provision of the Services and set out on the TM Website.

Where any Third Party Terms purport to take precedence over these General Terms, then between Us and You (particularly in relation to fees and payment) then these General Terms prevail and apply.

14. Severability

Each provision of these General Terms shall be construed separately and deemed to survive even if one or other of those provisions is held to be inapplicable or unenforceable.

15. No Waiver

No act or omission of Ours shall be construed as a waiver of any preceding breach of the Agreement by You.

16. Entire Agreement

The Agreement and, if applicable, any pre-existing written terms, constitute the entire agreement between the parties with respect to their subject matter and exclude any representations and warranties previously given or made.

17. Choice of Law

English Law shall govern these General Terms, and You hereby irrevocably submit to the exclusive jurisdiction of the English Courts. Nothing in these General Terms limits Our right to take proceedings against You in any other court of competent jurisdiction. The commencement of proceedings in one or more jurisdictions will not prevent Us from commencing proceedings in any other jurisdiction or jurisdictions.

18. Force Majeure

We will not be liable for any delay, interruption or failure in performance of Our obligations hereunder if caused or contributed to by any circumstance which is outside Our reasonable control, including war (declared or undeclared), flood, riot, Act of God, strike or other labour dispute (including those affecting Government officials), suspension or delay of service at public registries, delays or failures by Third Party Data Providers, change in the law, lack of power, or telecommunications failure.

19. Rights of Third Parties

Save in respect of Third Party Data Providers or any TM Group company, no other person who is not a party to any contract made pursuant to the Agreement has any right under the Contracts (Rights of Third Parties Act) 1999 to enforce the Agreement. These General Terms may be amended by Us without notice to or the consent of the Third Party Data Providers or any other TM Group company. You agree that Third Party Data Providers may bring directly a claim against You if You breach the Agreement or the relevant Third Party Terms.

20. Notice

20.1 Except as otherwise expressly stated under these General Terms, any notice or similar communications under the Agreement will be in writing, in English, and shall be delivered personally, sent by pre-paid registered post or recorded delivery (and registered air mail if overseas) or by fax to the recipient party at its address set out on the TM Property Searches Customer Registration Form or such other address as that party may specify by notice in writing to the other party.

20.2 Notices and similar communications will be deemed to have been received:

- (a) if delivered personally, at the time of delivery to the address referred to in Section 20.1;
- (b) if sent by pre-paid registered post or recorded delivery, 48 hours after posting it or if sent by registered air mail 2 days after posting; or
- (c) if sent by fax, on the next working day after sending provided a copy is also posted in accordance with Section 20.1 within 24 hours of the fax being sent.

20.3 Except as otherwise expressly stated under these General Terms, email and other electronic communications are not valid notices under the Agreement.

21. Amendments to the General Terms

- 21.1 These General Terms may be amended by TM Group (UK) Limited from time to time. You are advised to review the General Terms on a regular basis as You will be deemed to have accepted variations if you continue to use the Services after they have been notified to you by way of a notification posted in the News and Update section of the TM Website. If you do not agree to the changes then you should stop using the Services immediately.
- 21.2 The amended General Terms will apply to any Search Requests that You have submitted to Us after We have notified you pursuant to Section 21.1.
- 21.3 These General Terms of use were last updated on [DATE].

Annex 1

Scope of Services

The Services include:

1. User Management

Facilities to manage business contact details and for Authorised Users to create User accounts within their own organisation for the purposes of conducting business through the Services.

2. tmconvey

This is a service to provide search ordering relating to a conveyancing transaction and consists of:

- (a) Locating process, which validates a property address, and provides facilities to supply a supporting map or plan, using Ordnance Survey ("**OS**") AddressBase® Premium and OS MasterMap®;
- (b) Your use of AddressBase® Premium within our Services is governed by copyright for England and Wales: © *Local Government Information House Limited copyright and database rights 2016 100029622* and for Scotland: *This product contains data created and maintained by Scottish Local Government.*
- (c) Dealing with search requests from datasets used in the conveyancing search process;
- (d) Provision of search responses from Third Party Data Providers, electronically or otherwise;
- (e) Helpdesk services to support conveyancing searches; and
- (f) Value added services relating to searches.

3. Mapping

This is a service to view, outline and create a digital plan or plans to support your Search Request and if required to print OS MasterMap® large-scale mapping.

- 3.1 Your use of Our mapping is subject to Our terms and conditions governing the use of OS mapping.
- 3.2 You may require third party licences using and reproducing certain services obtainable from Us. For example if You scan any Crown Copyright material You must have an appropriate licence from the owner.
- 3.3 tmcore provides You with the facilities to request copies of Ordnance Survey maps ("**OS Data**") for the purposes of viewing, printing (or plotting). You may also overlay the OS Data subject to paragraph 3.1) with additional annotation, redlines, and other marks to create a composite image.
- 3.4 You may also use the OS Data (subject to paragraph 3.1) to create polygons and other shapes, based on the background map, and extract spatial information using the map as an interface to additional datasets.

- 3.5 The initial view is an area within which You can pan and zoom. This will invariably be larger than the area displayed on the screen.
- 3.6 Plot prices cover any form of printed output of a map from tmcore. Plot prices are based on the amount of mapping data used in creating the plot, and are in addition to the view costs.
- 3.7 Each search may require a different 'view' of a map, and may also allow an outline to be added to the map. This includes searches where the map itself is not submitted with the search, but the outline only.
- 3.8 You must not make additional copies of any OS data or data provided by Us unless You hold an Ordnance Survey "Business Use Licence" or "Paper Map Copying Licence". Any unauthorised or unlicensed copying of OS Data (as defined in the OS website) is an infringement of OS intellectual property, and We and/or Ordnance Survey reserve the right to pursue any infringement.

4. TM Managed Portfolio Services

- 4.1 From time to time, We may agree to provide You with services to assist You in the administration of Property related searches (the "**TM Managed Portfolio Services**").
- 4.2 You may request TM Managed Services by sending Us a written request describing the services You require, including the details of the Properties that will be the subject of the TM Managed Portfolio Services.
- 4.3 Once We have received Your request, We will agree with You the scope of the services to be provided as part of the TM Managed Services, and We will provide a quote to You for providing You with those TM Managed Portfolio Services.
- 4.4 Once we have agreed with You a price for the Managed Services, We will prepare the relevant Search Requests. Prior to submitting these Search Requests, We shall provide them to You for Your review. Unless otherwise agreed with You, We will activate such Search Requests only once You have reviewed them and We have received Your approval.

5. Case Management

This service is built around a case management structure which allows Users to record client details, including property addresses.

- 5.1 Add Client - You can add your client's personal details.
- 5.2 Add Case - You can create a property definition and relate it to your existing clients.
- 5.3 Delete Case - There will be a limit to the number of cases You can have in the Services at any one time. You will be required to delete cases from time to time to make room for future cases. Alternatively, We may delete cases from time to time. You are advised to make Your own copies as necessary of all deleted cases, subject to compliance with Section 10.4 of these General Terms.
- 5.4 Amend Address - You are able to add, amend, delete, addresses for one of your clients.
- 5.5 View Address - We provide You with a facility to view all the contact information of Your clients.

Annex 2

TM Group Pricing and Payment Terms

1. General

1.1 Our prices for the Services are in British pounds sterling and are exclusive of VAT. Our current prices can be found in Search Wizard Send Searches ("**Service Prices**"), TM YourMap screens and the Case Cost Summary. The prices of Third Party Data Providers can be found in their respective terms and conditions.

1.2 Our Service Prices are the sum of:

- (a) Our service charge for the relevant services; PLUS
- (b) the fees of Third Party Data Providers.

Any application taxation, including VAT and in relation to all insurance policies Insurance Premium Tax, shall be payable by You in addition to Our Service Price.

If We are required to incur additional expenses to third parties (including Third Party Data Providers) for search fees or other disbursements to enable us to provide the Services then We are authorised by You to pay such third parties and in doing so We will act as Your agent. However, the responsibility for payment of any additional expenses remains with You and will be collected by Us in accordance with these General Terms.

For the avoidance of doubt, where We are collecting payment for searches or services sourced by Us for You from Third Party Data Providers, these payment terms apply and not any payment or invoicing terms set out in any terms and conditions of Third Party Data Providers.

1.3 The Service Prices do not include:

- (a) 'Bundling' of services (i.e. the grouping of separate services in a single package);
- (b) volume discounts; and
- (c) any special terms and prices that may be notified to You separately in writing by Us.

1.4 When You make a Search Request, You irrevocably agree to pay Our Service Prices for the Services as described in the Search Wizard Send Searches, TM YourMap screens or the Case Cost Summary, even if the Search Request was made in error or You have supplied incorrect information in the relevant Search Request.

2. TM Managed Portfolio Services

The price for any TM Managed Portfolio Services shall be the price agreed by Us with You pursuant to paragraph 4 of Annex 1 of these General Terms.

3. Payment Terms

3.1 To use certain parts of the Services You will be required to sign a Direct Debit authorisation form allowing Us to collect amounts due directly from Your bank account. These forms will need to be accepted by both Us and Your bank prior to Your use of the relevant Services.

- 3.2 Your payments for Services will be collected by Us directly from Your bank account. Separate invoices will be sent to You (or made available to You on-line) confirming individual service requests and the associated amounts debited from Your bank account for each transaction. Monthly statements may be issued summarising Your account.
- 3.3 If a Search Request is cancelled by You or by Us, and the Third Party Data Provider accepts the cancellation, no fee will be payable. We will endeavour to credit Your account with the amount of the Search Request charges, however there may be an administration fee to pay which will be agreed with you in advance.
- 3.4 If a Search Request is rejected (for example, where the Property details are incorrect) We will credit Your account with the amount of the Search Request charges, unless We are charged for the same by any Third Party Data Provider.
- 3.5 Any disputes or queries on the charges or invoice amounts should be made to the TM Helpdesk by phone or email (0844 249 9202 or helpdesk@tmproperty.co.uk) within 30 days of receipt of invoice.

4. Archive Policy

- 4.1 A case is deleted manually by the User or by Our automatic process. The automatic process marks cases for deletion based on the following rules:
- (a) Residential purchase, re-mortgage and other cases with all searches returned and viewed – six months after last search ordered;
 - (b) Residential Sale with all searches returned and viewed – 12 months after last search ordered;
 - (c) Commercial with all searches returned and viewed – 12 months after last search ordered;
 - (d) Social Housing accounts (regardless of case type) with all searches returned and viewed – 12 months after last search ordered. Any case with active searches (i.e. not viewed) – 24 months after last search ordered; or
 - (e) Any cases with no searches – 6 months after case creation.