

# Terms and conditions for access to the Survey Services Portal

## 1. Introduction

- 1.1 The Department of Lands (Lands) agrees to provide access to the Survey Services Portal (SSP) to those clients/party who have agreed to abide by the following terms and conditions and whom have met all the requirements to become a user of the SSP.
- 1.2 These terms and conditions may be referred to as the *Terms and conditions for access to the Survey Services Portal*.
- 1.3 Any party who agrees to use the SSP agrees to be bound by the terms and conditions as amended and varied from time to time.
- 1.4 These terms and conditions should be read in conjunction with the *LPI lodgment terms and conditions*, in particular, Part 4 financial customer account. All users of the SSP agree to be bound by the *Terms and conditions for lodgment services* as amended and varied from time to time.
- 1.5 Terms and conditions for access to the Survey Services Portal shall be governed by and construed in accordance with the laws of NSW.
- 1.6 In the case of any conflict between these terms and conditions and the Acts and regulations applying to the operations of Lands, the Act or regulation prevails.

## 2. Definitions

In these terms and conditions, except in so far as the context or subject matters otherwise indicates or requires, definitions are as follows:

- 2.1 **Client:** the entity who has fulfilled the requirements to become a financial customer or other customer of the Survey Services Portal.
- 2.2 **Administrator:** a person who is responsible for all communication, administration, and maintenance of user ID and passwords on behalf of the client in relation to the SSP.
- 2.3 **Survey Services Portal (SSP):** Internet-based information access and delivery service which enables access to various land and property information online services. The products and services are dependant upon the user and approval by Lands.
- 2.4 **Authorised user:** a person nominated by the client to be issued with a user ID to enable access the SSP.

## 3. Client & authorised users

- 3.1 To become a client of the SSP you must complete the Customer Account Application on the Lands website and available through Lands and the Customer Account Application must be approved by the Information Services Manager, Department of Lands, Queens Square, Sydney.

- 3.2 The client will in a manner required by Lands nominate the persons it wishes to be authorised users. An authorised user may be an employee or agent of the client.
- 3.3 To become an authorised user of the SSP the applicant, or the client on behalf of the applicant, must apply for a personal user ID and password by providing certain personal details requested by Lands.
- 3.4 To obtain approval to become an authorised user of the SSP you must be either:
- 3.4.1 a NSW registered surveyor
- 3.4.2 a survey searcher
- 3.4.3 another person or entity approved by Lands.
- 3.5 An authorised user will be required at the first log on to SSP, and whenever requested by Lands, to agree to the terms and conditions of use. Logging on to the SSP will constitute acceptance of those terms and conditions.
- 3.6 If an authorised user does not accept the terms and conditions of use during the log on procedure, the authorised user will be denied access.
- Note: You will not be permitted to proceed with a lodgment unless you click the 'I agree' button at the end of the terms published on the website.
- 3.12 The client is responsible for maintaining the confidentiality of the user ID and password, and is fully responsible for all activities that occur under it.
- 3.13 The client is responsible for any use, whether authorised or unauthorised, by any person, of any user ID or password issued by Lands to the client to access the SSP. The client agrees to pay all fees and charges incurred as a result of that use.
- 3.14 An authorised user is only permitted to access those services within SSP that are applicable to that authorised user.
- 3.15 If the client wishes to revoke a user ID of an authorised user, the client will, in a manner required by Lands, notify Lands.
- 3.16 You may cancel your access to the SSP system at any time without the need to provide a reason by providing written notice to Lands of not less than one (1) month.
- 3.17 The client will use all reasonable care to ensure that no person other than authorised users access the SSP.
- 3.18 The client will use all reasonable care to ensure that no person other than those persons authorised use or access the information obtained from the SSP.

- 3.7 The client agrees to be bound by these terms and conditions and the *LPI lodgment terms and conditions* for access to the Survey Services Portal.
- 3.8 The client will use all reasonable care to ensure authorised users comply with the terms and conditions.
- 3.9 If the client becomes aware that any authorised user has breached any of the terms and conditions, the client will immediately inform Lands.
- 3.10 If Lands becomes aware that an authorised user has breached any of the terms and conditions, Lands may immediately revoke the authorised user's user ID and password and deny that person access to the SSP.
- 3.11 Any breach of the terms and conditions by an authorised user will be regarded as a breach by the client, whether or not the client was aware of the breach.

## 4. Access

- 4.1 If Lands agrees to provide a client with access to the SSP they will be allocated a user ID and password.
- 4.2 Lands may amend access or areas of access to the SSP at any time by agreement between Lands and the authorised user, or written notice given by Lands to the authorised user.
- 4.3 Lands may cancel authorised user access or cancel areas of access to the SSP for any reason considered sufficient by Lands, including but not limited to:
- 4.3.1 if Lands suspects that the authorised user, or someone acting on their behalf, is being fraudulent
- 4.3.2 if the SSP is being misused by the authorised user, or someone acting on their behalf

- 4.3.3 if Lands believes the user ID and password are being misused or are likely to be misused
- 4.3.4 for continuous submission of data that fails to meet published standards
- 4.3.5 for non payment, or non compliance with the terms for payment, of fees levied on lodgment of documents.
- 4.4 Subject to these terms and conditions, Lands agrees to allow the client access to such of those services which comprise SSP as are approved by Lands for the client.
- 4.5 The SSP will have varying areas of access depending upon the user rights as assigned by Lands. Lands will allow access to the varying areas with consideration to the clients and their requirements.
- 4.6 The client may use information accessed via SSP only in conjunction with official duties, being those undertaken in their professional surveying or related capacity.
- 4.7 The client may not do any of the following with the information.
  - 4.7.1 Alter.
  - 4.7.2 Data aggregating, data matching, marketing, compilation of mailing lists, list brokering or any related purpose except to the extent that such data aggregation, data matching, marketing, compilation of mailing lists, list brokering or related purpose is required by law (including any obligation under a court order).
  - 4.7.3 Print the subject information on any pre-printed paper unless the information layout and pre-printed format have been approved by Lands and includes © *Department of Lands [year]*.
- 4.8 The user acquires only the right to the information and does not acquire any right of ownership.
- 4.9 Any software that is made available to download from the SSP is the property of Lands and/or its suppliers. Use of the software is governed by the terms of the end user licence agreement, if any, which accompanies or is included with the software. An end user will not be permitted to download the software unless the licence agreement is agreed to.

## 5. Variation of the SSP

- 5.1 Lands may, by giving to the client, where possible not less than 14 days or reasonable written notice:
  - 5.1.1 discontinue the SSP in its entirety
  - 5.1.2 discontinue, delete or vary any service that is part of SSP
  - 5.1.3 add additional services to SSP
  - 5.1.4 vary the hours of normal availability.
- 5.2 When giving notice to the client of any additional service to be added to SSP, Lands will include any terms and conditions that will apply to that additional service.
- 5.3 If the client wishes to have access to an additional service, and agrees to be bound by any terms and conditions that apply to that additional service, then the client will nominate in a manner required by Lands the persons it wishes to be authorised users of that additional service.
- 5.4 Lands will as soon as practicable make any necessary changes to enable the nominated authorised users to access the additional service.

## 6. Assignment

- 6.1 The client may not, assign any of the client's rights or liabilities relating to the use of the SSP.
- 6.2 If for any reason, a Minister other than the Minister for Lands becomes the Minister responsible for the department or body operating the SSP, all of Lands rights and responsibilities relating to the SSP will be deemed to be assigned to that other Minister.

## 7. Payment of fees

- 7.1 The client agrees that:
  - 7.1.1 Lands will issue invoices to the client, and the client must pay the fees specified in such invoices

- 7.1.2 the client must, unless otherwise advised in writing by Lands, pay the fees within the time period specified on the invoice issued by Lands
- 7.1.3 Lands may vary any of the fees or method of payment provided it has given the client 14 day's prior written notice of any variation.
- 7.2 If the client breaches clause 7.1 then Lands may, without limitation and, in its absolute discretion:
  - 7.2.1 immediately suspend the client's access and each authorised user's access to the SSP
  - 7.2.2 charge the client interest on any overdue amounts at a rate equal to 2% above the applicable base lending rate of WESTPAC Bank from time to time calculated from the payment due date until the date of payment in full
  - 7.2.3 charge the client for all costs reasonably incurred by Lands in relation to the enforcement and/or collection of any overdue amounts.
- 7.3 Payment will be allocated against invoices as outlined in *LPI lodgment terms and conditions*, Part 4. Financial Customer Accounts

## 8. GST

- 8.1 Notwithstanding any other provision of these terms and conditions, with respect to any taxable supply made by Lands where Lands is or becomes liable to pay GST, Lands may add GST to the applicable fees at which time Lands will issue to the client a tax Invoice in respect of the supply. The client must pay the amount in such tax Invoice in accordance with clause 7.1. In this clause, terms used have the meaning given to them in Section 195-1 of the *A New Tax Systems (Goods and Services Tax) Act 1999 (Cth)*.

## 9. Termination of access

- 9.1 A clients' access to the SSP will continue until terminated by either party.
- 9.2 Either party may terminate this access to the SSP by giving the other party not less than one month's written notice.
- 9.3 Lands may terminate this access to the SSP immediately if the client, or an authorised user, is in breach of the terms and conditions and such

breach has not been remedied within 30 days of written notice by Lands. If a breach is deemed a significant breach by Lands, Lands may immediately cancel access to the SSP without prior notice to the client.

- 9.4 Upon termination of the access to the SSP:
  - 9.4.1 Lands will deny the client and all authorised users access to the SSP
  - 9.4.2 the client must immediately pay all outstanding fees then due and payable.

## 10. Privacy

- 10.1 Personal information will be used to authenticate your application for a user ID and password and will be recorded and used in connection with correspondence relating to the lodgment of plans or other documents using the SSP.
- 10.2 Your personal information will not be released unless the law permits it or your permission is given.
- 10.3 The client acknowledges that Lands is subject to the provisions of the *Privacy and Personal Information Protection Act 1998 (NSW)* and the *Privacy and Personal Information Protection Regulation 2000 (NSW)* in respect of such of the property information provided under this that is 'personal information' as defined in section 4 of the *Privacy and Personal Information Protection Act 1998 (NSW)*.
- 10.4 The client must:
  - 10.4.1 not do anything which if done by Lands would be a breach of the legislation or regulations referred to in clause 10
  - 10.4.2 comply at all times with the requirements of the *Privacy Act 1988 (Cth)* in relation to its handling of 'personal information' including the collection, use, disclosure and security of such information, whether or not the client is required by law to comply with the provisions of the *Privacy Act 1988 (Cth)*
  - 10.4.3 comply with Lands' privacy principles

- 10.4.4 comply with any and all directions given by Lands in order for Lands to comply with its obligations under the legislation and regulations referred to in clause 10.
- 10.5 The client may use the personal information for an authorised purpose for which it was collected, for other directly related purposes supporting state economic, and social development and the efficient planning and provision of services to the community, or other purposes required by law.
- 10.6 Authorised purpose means:
- 10.6.1 dealings with interests in land authorised by law
- 10.6.2 a purpose directly related to such dealing provided the purpose is not contrary to any law
- 10.6.3 an enquiry relating to land or the ownership of land recorded in Registers kept by Lands provided the enquiry or the purpose of the enquiry is not contrary to any law:
- 10.6.3.1 but does not mean:
- 10.6.3.1.1 data aggregation, data matching, marketing, compilation of mailing lists, list brokering or any related purpose except to the extent that such data aggregation, data matching, marketing, compilation of mailing lists, list brokering or related purpose is required by law (including any obligation under a court order).

## 11. Force majeure

- 11.1 Lands will not be under any liability for any delay, loss or damage (including consequential loss) caused to the client directly or indirectly by the unavailability of access to the SSP or any part thereof due to the failure of the client to comply with the terms and conditions, power or mechanical failure or any cause whatsoever out of the control of Lands including acts of war, acts of God, acts of terrorism, earthquake, flood, riot, embargo, sabotage or governmental act.

## 12. Governing law

- 12.1 This shall be governed by and interpreted in accordance with the laws of the State of New South Wales.

## 13. Interruption of service

- 13.1 Lands will, subject to clause 11.1, use all its reasonable endeavours to ensure that the service is available during current electronic business hours i.e. 6.30am-11.30pm, 7 days per week or as varied from time to time.

## 14. Liability

- 14.1 The client acknowledges and agrees that, other than as expressly provided for in these terms and conditions, to the extent permitted by law:
- 14.1.1 no warranty, condition, description or representation is given by Lands in relation to the SSP or any part thereof, any documentation or any services provided in conjunction with the SSP
- 14.1.2 all representations, warranties, terms and conditions whether express or implied by use, statute or otherwise (including in relation to the state, quality or fitness for purpose of the SSP or any part thereof, or any documentation or services) are excluded
- 14.1.3 Lands shall not be liable to the client or any of its customers for any loss or damage (including loss of profits, business, revenue or data) whether in contract, tort (including negligence) or otherwise arising from or in connection with:
- 14.1.3.1 compliance with these terms and conditions
- 14.1.3.2 the performance of the SSP or any part thereof
- 14.1.3.3 any defect, error or inaccuracy in the SSP or any part thereof or any documentation
- 14.1.3.4 any inaccuracy, omission, defect or error in the client's computer systems
- 14.1.3.5 any claim for infringement of intellectual property rights based upon the modification, combination, operation or use of the SSP or any part thereof with any computer programs, systems or data not furnished by Lands.
- 14.2 Where legislation implies in these terms and conditions any term (including a condition or warranty) which cannot by law be excluded ("non-excludable term"), and notwithstanding clause 14, Lands is liable to the client for breach of a non-excludable term, then the liability of Lands for that breach shall be limited to the

extent permitted by law and at the option of Lands, to one or more of the following:

- 14.2.1 the supplying of the services again; or
- 14.2.2 the payment of the cost of having the services supplied again.
- 14.3 The client must indemnify and keep indemnified, hold harmless and defend Lands and any officer, employee or agent of Lands from and against any and all actions, proceedings, claims, demands, costs, losses, damages and expenses which may be brought against or made upon Lands arising from, or incurred by reason of or in connection with:
  - 14.3.1 any provision of the SSP or any part thereof to the client;
  - 14.3.2 any act or omission of the client;
  - 14.3.3 any breach of the terms and conditions by the client, authorised users or any other of the client's employees, agents or officers;
  - 14.3.4 any use, including unauthorised use, of the SSP, or any user ID or password.
- 14.4 Information provided by the SSP service is only current at the time and date of the supply of information to the client.
- 14.5 Lands provides access to the SSP to the client on the basis that Lands does not render legal advice or engage in other professional services in relation to the SSP.

## 15. Transmission speed

- 15.1 The client acknowledges that Lands has no control over the speed of transmission of information where the Internet is used for access.

## 16. Waiver

- 16.1 None of the terms and conditions will be taken to be waived except by written notice signed by the client and Lands.

## 17. Intellectual property

- 17.1 The client acknowledges and agrees that all copyright, trademark and other intellectual property rights in:
  - 17.1.1 data or information obtained from the SSP
  - 17.1.2 any documentation provided by Lands to the client for the purposes of accessing the SSP including any user manual
  - 17.1.3 are the property of either Lands, the State of New South Wales or the agencies which provide the information or data comprised in the SSP or documentation to Lands.
- 17.2 The client must promptly report to Lands any infringement or suspected infringement of any copyright, trademark and other intellectual property rights referred to in clause 17.1.
- 17.3 Lands represents and warrants that it has the right and authority to enter into, and grant the rights described in these terms and conditions.

## 18. Disputes

- 18.1 Where the client has any complaint in relation to the SSP or Lands' performance pursuant to these terms and conditions ("complaint"), the client must contact the Lands 'Business Contact'. Where reasonably required by Lands, the client must put the complaint in writing and provide other relevant information.
- 18.2 If any dispute arises out of these terms and conditions ("dispute") the complainant party must not commence any court proceedings. A complaint shall not be a dispute unless and until Lands has failed to resolve the complaint to the reasonable satisfaction of the client.
- 18.3 A party claiming that a dispute has arisen must notify the other party to the dispute giving details of the dispute.
- 18.4 Within 14 days after a notice is given under clause 18.3 the parties to the dispute must each nominate in writing a representative authorised to settle the dispute on its behalf.

- 18.5 During the 14-day period after a notice is given under clause 18.3 (or such longer period agreed in writing by the parties to a dispute) the parties to the dispute must each use their best efforts to resolve the dispute.
- 18.6 If the dispute cannot be resolved to the satisfaction of each party, either party may terminate access to the SSP.

## 19. Notice

- 19.1 Any notice given under these terms and conditions:
- 19.1.1 must be in writing and signed by a person duly authorised by the sender
- 19.1.2 must be addressed to the intended recipient at the address or facsimile number last notified by the intended recipient to the sender
- 19.1.3 shall be given and will be taken to have been given or made:
- 19.1.3.1 in the case of delivery in person (including by overnight or international courier) or to the recipient's address, when delivered
- 19.1.3.2 in the case of pre-paid post, three business days after posting
- 19.1.3.3 in the case of facsimile transmission, at the time of transmission, provided that, following transmission, the sender's facsimile machine produces a transmission confirmation report confirming successful transmission of the facsimile in its entirety, but if delivery or receipt occurs on a day on which business is not generally carried on in the place to which the notice is sent or is later than 5pm (local time) it will be taken to have been duly given or made at the commencement of business on the next day on which business is generally carried on in that place.

Department of Lands  
Head Office  
1 Prince Albert Road  
Queens Square  
SYDNEY NSW 2000  
T 61 2 9228 6666  
F 61 2 9233 4357

[www.lands.nsw.gov.au](http://www.lands.nsw.gov.au)

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