

## Website User Terms and Conditions

### Definitions

In these Terms and Conditions, unless the context otherwise requires:

**“Authorised User(s)”** means individual user(s) who is a sole trader or who are personnel of the Subscriber, who provide a valid email address and who have been allocated by Terralink a user name and password in order to access the eMap Services;

**“eMap Services”** means the website and the services contained therein provided by Terralink for use by Authorised Users accessed through the domain name [www.emap.co.nz](http://www.emap.co.nz) (or such other domain name as Terralink may nominate from time to time) or url at [emap.co.nz/emap/](http://emap.co.nz/emap/);

**“Intellectual Property”** includes copyright, all rights conferred under statute, common law or equity in relation to inventions (including patents), registered and unregistered trade marks and business and domain names, registered and unregistered designs, circuit layouts, confidential information and know-how, textual material, artwork, imagery, photographs, computer software, audio and visual elements and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, trade secrets or confidential or other proprietary information, together with all right, interest or licences in or to any of the foregoing;

**“LINZ”** means Land Information New Zealand;

**Proprietary Notice** means any notice required by or on behalf of Terralink or any third party data supplier, whether or not regarding ownership or title (including any written notices cautionary notes, and disclaimers) included in the eMap Services;

**“Subscriber”** means a person or entity who has entered into an Agreement with Terralink for the eMap Services;

**“Subscription Fees”** means the subscription fees specified by Terralink from time to time in the Agreement with you, your company or organisation and payable by you (where you are the Subscriber), or your company or organisation as the case may be, to Terralink;

**“Terralink”** means Terralink International Limited;

**“Third Party Data”** means data sourced from third parties outside of Terralink, including LINZ, and for which Terralink is permitted to use and on-license the use of to the Subscriber;

**“Working Day”** shall have that meaning ascribed to it under section 2 of the Companies Act 1993.

### GENERAL PROVISIONS

1.1 Welcome to eMap Services. By using the eMap Services you, your company or organisation has accepted the terms and conditions, including any special terms and conditions of any third party supplier of information or data which may apply to your use of the eMap Service. As an “Authorised User”, you must comply with these terms and conditions when using the eMap Service. Please read these carefully so that you can ensure you comply with the terms of use.

### 2. USER NAMES AND PASSWORDS

2.1 You have been provided with appropriate log on details, including the allocation of a user name and password by Terralink, or by your company or organisation where a valid email address has

been supplied by you (“Authorised Users”). You are required to keep your user name and password secure and confidential and must not share this with any other person. You are responsible for all use of the eMap Service made using your user name and password whether or not the use is made by you, your colleagues or by some-one else using your user name and password. You are responsible for protecting and securing your user name and password for unauthorised use. If you believe there has been a breach of security of your user name or password, such as theft or unauthorised use, you must notify Terralink immediately by e-mail to [info@terralink.co.nz](mailto:info@terralink.co.nz) and also immediately notify your designated company administrator (if applicable), so that they can also confirm notification with us.

## 2.2 Property Reports:

2.2.1 As part of the eMap Services, as an Authorised User you can access reports relating to properties via Terralink International's Terranet Service which is available at [www.terranet.co.nz](http://www.terranet.co.nz).

2.2.2 If, as an Authorised User you, your company or organisation elects to use Terralink's Terranet Service, your use of that service will be governed by the terms and conditions for that service and not these terms and conditions.

2.2.3 Where your user name and password is used for the purposes of ordering Property Reports or Legal Documents from the Terranet Service, you (where you entered into an agreement for Terranet Services directly with Terralink) or your company or organisation (as the case may be) are liable for all fees relating to the Property Reports or Legal Documents as ordered, which are in addition to the Fees payable for eMap Services.

2.3 If Terralink has reason to believe that any information you have supplied is not accurate, or if Terralink considers that you have breached any of these terms and condition for use, we may immediately terminate the Agreement held by you, or your company or organisation, and you, your company or organisation will cease to be an Authorised User of the eMap Service.

## 3. YOUR DETAILS

3.1 Where your company or organisation has entered into the Agreement with Terralink, they and not you are required to provide us with complete and accurate registration information and to update the information provided if it changes, including any change to your e-mail or postal address. Where these change, you are required to advise your designated contact person so that they can update your information with us. If you entered the Agreement directly with Terralink, you are responsible for notifying us.

3.2 If you fail to notify us or your company or organisation of any change in your contact details, you or they may be in breach of the

Agreement with us and if this occurs your access to this service may be suspended or terminated. Therefore it is important that you comply with clause 3.1 above.

## 4. eMAP SERVICES TO BE PROVIDED TO AUTHORISED USERS

4.1 From the commencement date of your access to the eMap Services, Terralink grants to you as an Authorised User a non-exclusive and non-assignable right of access to the eMap Services.

4.2 Terralink will use its best endeavours to maintain the availability of access by Authorised Users to the eMap Services during the term of the Agreement with you, your company or organisation.

## 5. MODIFICATION OF eMAP SERVICES OR MATERIALS

5.1 Terralink reserves the right to:

5.1.1 change or refine the features and functionality of the eMap Services; and

5.1.2 dependant on the service type subscribed to, restrict your access to parts of the eMap Services; and

5.1.3 suspend or discontinue any or all parts of the eMap Services, for the purposes of scheduled maintenance,

without notice or liability.

5.2 Terralink will endeavour to schedule outages or undertake maintenance (where possible) outside of the normal business hours of 8am to 5.30pm Monday to Friday.

5.3 Some of the materials in the eMap Services is Third Party Data. Terralink may be required to amend or delete any material (or any part of the material) that is Third Party Data. This means that material which may have previously been available and accessed by you may no longer be available the next time you access the eMap Services. Where Terralink is required to make such amendments or deletions, you agree that the provisions of clause 9 will apply.

**6. AUTHORISED USERS OBLIGATIONS AND ACKNOWLEDGMENTS**

6.1 You as an Authorised User acknowledge that the eMap Services are provided on an “as is” and “as available basis”.

6.2 Where your company or organisation has entered into the Agreement with Terralink, or you (where you have entered an agreement directly with Terralink), you or they are responsible for obtaining access to the eMap Services via the Internet and for any related fees that may arise with respect to obtaining internet access for that purpose (e.g. incurred to internet service providers).

6.3 You acknowledge and agree that:

6.3.1 if you use or rely on the eMap Services or any data or materials available through the eMap Services that you do so solely at your own risk; and

6.3.2 access to the eMap Services may be interrupted, restricted or delayed from time to time without notice; and

6.3.3 Terralink does not warrant or guarantee that the eMap Services will be available continuously or that the operation of the eMap Services will be error free; and

6.3.4 information contained within the eMap Services is for informational purposes only; and

6.3.4 some of the material, data and information which are provided as part of the eMap Services is sourced from parties outside of Terralink, and as such, Terralink cannot and does not provide any warranties of any kind whatsoever in relation to any material and Third Party Data contained within the eMap Services or provided to you in accordance with this Agreement; and

6.3.5 **for Subscriber Data:** where as part of the eMap Services, you, your company or organisation elect to incorporate your own data (“Subscriber Data”), you agree that:

(i) you do so at your own risk; and

(ii) Terralink is under no obligation to install or convert Subscriber Data for use by you within the eMap Services, your computer equipment and software (such installation and conversion being entirely at your own risk); and

(iii) Terralink has no additional obligation to provide training to you other than the training provided by way of Terralink’s eMap Training Manual, Training Videos and webinars.

6.4 You undertake not to attempt to or to damage, interfere or harm the eMap Services or any network or system underlying or connected to the eMap Services.

6.5 You acknowledge and agree that:

6.5.1 you are only entitled to access the eMap Services internally in the course of your ordinary business and externally as provided for in clause 6.5.5;

6.5.2 when accessing the eMap Services, Terralink retains ownership and proprietary rights in the eMap Services;

6.5.3 it is your responsibility to use the eMap Services correctly;

6.5.4 you may not on–license the eMap Services, use the eMap Services in any way other than intended by Terralink, modify, extract any data, material or information within the eMap Services (including but not limited to using any data extraction software or tool), translate, reverse engineer, decompile, disassemble, or translate the material within into another solution, copy, reproduce, republish, upload to a third party (including any third party websites), post, transmit or distribute any of the eMap Services content except as provided for within the functionality of the service itself;

6.5.5 where you are expressly permitted to use any material obtained from the eMap Services, including for the purposes of printing or publishing that material, you must display the proprietary devices specified at clause 6.6 and 6.7. For the avoidance of doubt such proprietary devices shall be displayed where you publish, material in its original format as well as on any reproduction or adaptation of the material.

6.6 Where material is published in the format in which it is supplied, you shall use or ensure the use of the following proprietary device:



6.7 Where material is published in the format which is an adaptation of or amendment to the material, you shall use or ensure the use of the following proprietary device:

Created Using



## 7. SUBSCRIPTION FEES AND PAYMENT TERMS

7.1 You, your company or organisation has agreed to pay to Terralink the relevant Subscription Fees specified in the Agreement. If you, your company or organisation fail to make payment of the Fees, Terralink has the right to suspend or cancel your access to the eMap Services.

7.2 Where your access to the eMap Services is suspended for non payment of the Subscription Fees by you, your company or organisation, access will continue to be suspended until payment of all outstanding Subscription Fees is received by Terralink. Once payment is received by Terralink access to the eMap Services will be reinstated.

7.3 Where your access is terminated for non payment of the Subscription Fees by you, your company or

organisation, access to the eMap Services will not be reinstated by Terralink.

## 8. WARRANTIES AND ACKNOWLEDGEMENTS

8.1 Terralink warrants that:

8.1.1 it has full authority to licence the eMap Services (including Third Party Data) on these terms and conditions and that the subsequent use of the data including Third Party Data within the eMap Services does not breach any applicable laws relating to privacy and data protection;

8.1.2 the data within the eMap Services does not infringe any person's intellectual property; and

8.1.3 where you elect to import Subscriber Data, it will use all reasonable endeavours to ensure the security of the Subscriber Data from unauthorised access and use.

8.2 Subject to clause 8.1, all conditions, guarantees and warranties expressed or implied by statute, common law, equity, trade customer usage or otherwise are expressly excluded to the maximum extent permitted by law. The liability of Terralink for breach of any condition, guarantee or warranty that cannot be excluded is limited, at Terralink's option, to Terralink reinstating or making available to you the eMap Services.

8.3 Subject to clause 8.1 and 8.2 and without limiting clauses 8.1, 8.2, 8.4 and 8.5, you acknowledge and agree that some of the data and information within the eMap Services is sourced from third parties and Terralink makes no representations or gives any warranties of any kind whatsoever in relation to the eMap Services or the information contained therein. In particular, Terralink does not represent or warrant that the eMap Services is free from errors, omissions or other inaccuracies or is fit for any purpose. You, (where you have entered into an agreement directly with Terralink) or your company or organisation agree to release Terralink from all liability, whether in contract, tort (including negligence), equity or on any other basis for any and all errors, omissions or other inaccuracies in the eMap Services.

8.4 Terralink does not represent or warrant that the eMap Services will be compatible with your computer equipment and software, or that if you elect to import Subscriber Data, that your data will be compatible with the eMap Services. Terralink has no obligation to install or convert the eMap Services for use by you with your computer equipment and software.

8.5 Terralink does not represent or warrant that the data and information within the eMap Services will be free from infection, viruses or destructive code and Terralink shall not be liable, whether in contract, tort (including negligence), equity or on any other basis for any damage to, or viruses that may infect your or your company's or organisation's computer equipment or software due to your use, installation or conversion of the eMap Services.

8.6 You acknowledge and agree that the limitations and exclusions of liability contained in:

8.6.1 clauses 8.2, 8.3, 8.4, 8.5, 9.1 and 9.2 (with all references to Terralink are deemed to be replaced with reference to LINZ); and

8.6.2 clause 9.3,

apply for the benefit of and may be enforced by LINZ, in relation to the data within the eMap Services sourced by Terralink from LINZ (as the case maybe) for the purposes of the Contracts (Privity) Act 1982. For the avoidance of doubt, this clause shall not in any way limit Terralink's right to enforce any of the provisions of this Agreement in relation to the data sourced by Terralink from LINZ.

## 9. LIABILITY AND INDEMNITY

9.1 Terralink shall not be responsible or liable whether in contract, tort (including negligence), equity or on any other basis for any loss, damage, liability or expense sustained by you or any other person, directly or indirectly, from any use whatsoever of the eMap Services even if Terralink has been advised of, or has knowledge of, the possibility of such loss, damage, liability, or expense. Such loss or damage includes, without limitation, damage to property, injury to persons, loss of profits, business interruption loss, denial

of service or access to the eMap Services or any other loss, damage or expense that arises as a result of the eMap Services being shown to be wholly or partially incorrect or unsuitable.

9.2 Without limiting clause 9.1, Terralink shall not be liable whether in contract, tort (including negligence), equity or on any other basis for any loss, damage, liability or expense whatsoever arising from any modification, amendment or deletion (whether pursuant to clause 5.3 of these terms and conditions) made to the data, including Third Party Data within the eMap Services, or any compilation or derivative work created from or using the data, including Third Party Data within the eMap Services in each case whether made by Terralink, by you or by any other person.

9.3 In the event that any exclusion of Terralink or LINZ's liability set out in this Agreement is inapplicable or is held unenforceable, Terralink's and LINZ's total aggregate liability under or in connection with this Agreement, or arising out of any use, reproduction, modification, amendment or deletion of the data, including Third Party Data, provided through the eMap Services or creation of compilations or derivative works of or from the data, including Third Party Data, (by you or by any other person), whether that liability arises in tort (including negligence), contract equity or on any other basis, shall be limited as follows:

9.3.1 Terralink's total aggregate liability shall be limited to \$100; and

9.3.2 LINZ total aggregate liability shall be limited to \$1.

## 10. COPYRIGHT

10.1 The material contained within eMap Services is protected under copyright and other laws of New Zealand and under international conventions, and similar laws abroad. Unless otherwise stated, copyright and other intellectual property rights in all the materials within the eMap Services, including but not limited to textual material, artwork, imagery, computer software, audio, visual elements, is owned or controlled by Terralink, or its licensors.

10.2 You agree not to remove, cover, overlay, obscure or change any copyright notices, legends, or terms of use which Terralink may post within eMap Services.

## **11. PROTECTED RIGHTS**

11.1 The name and logo of Terralink and eMap are registered trademarks. You are not permitted to use or reproduce or allow any-one to use or reproduce these trademarks for any reason without our express written permission, which may be withheld. The software which operates eMap Services is proprietary software and you are not permitted to use it except as expressly allowed for under these terms and conditions. Any other use or purported licensing, modification, enhancement or interference is strictly prohibited.

## **12. ADVERTISING MATERIAL**

12.1 The eMap Services may include advertising and other material submitted by parties other than Terralink, and may provide links to other sites operated by advertisers and third parties. Those parties (and not Terralink) are responsible for ensuring that such material and such sites comply with all relevant laws and regulations. To the full extent permissible or by law, Terralink disclaims all responsibility for any error, omission or inaccuracy in such material or its failure to comply with the relevant laws or regulations.

12.2 Terralink has no responsibility regarding any material you obtain from any other website, even if you access it via a link from the eMap Services.

## **13. PRIVACY**

13.1 Terralink is an Agency for the purposes of the Privacy Act 1993. All personal information you supply to Terralink will be dealt with by Terralink in accordance with that Act. Terralink may from time to time send you information on selected products and services and invite others to do so. Should you not wish for yourself to receive this material, email your request and contact details to [info@terralink.co.nz](mailto:info@terralink.co.nz).

13.2 You have the right to access your personal profile and if there are errors in the information, correct any of your personal information.

## **14. SUBMISSIONS**

14.1 Should you in using the eMap Services respond to Terralink with information including the giving of feedback, such as questions, comments, suggestions, or the like regarding the eMap Services (the "Information"), or the content of any item, such Information shall be deemed to be non-confidential and Terralink shall have no obligation of any kind with respect to such Information. In addition, Terralink shall be free to reproduce, use, disclose, display, exhibit, transmit, perform, create derivative works, and distribute the Information to others without limitation, and to authorise others to do the same. Furthermore, Terralink shall be free to use any ideas, concepts, know-how or techniques contained in such Information for any purpose whatsoever, including, but not limited to, developing, manufacturing and marketing products and other items incorporating such Information. This paragraph is not intended to apply to any personal information about you (such as name, mailing address and email address), the use of which will be governed by clause 13.

## **15. GOVERNING LAW**

15.1 These terms and conditions will be governed by and construed according to the laws of New Zealand and the courts of New Zealand will have non-exclusive jurisdiction in any proceedings relating to it.