

1. Definitions

"Conditions" means these terms and conditions.

"Customer" means your organisation.

"ESS" means TopMark Solutions Pty Ltd ABN 72 091 080 901.

"ESS Data Input Fee" means the fee ESS charges for inputting data into a form (written or online) plus an amount equal to any GST on the fee. Such fee will be shown in an ESS Request

"ESS Lodgment Fee" means the fee ESS charges for lodging a settlement notice or a request to withdraw a settlement notice with NRM plus an amount equal to any GST on the fee.

"ESS Lodgment Request" means a request to ESS for lodgment of a settlement notice or a request to withdraw a settlement notice with NRM including any request generated directly or indirectly using software provided by ESS on equipment owned, controlled or used by the Customer.

"ESS Request" means an ESS Lodgment Request or an ESS Search Request.

"ESS Service Fee" means the fee ESS charges for ordering searches and arranging for the return of search results to the Customer plus an amount equal to any GST on the fee.

"ESS Search Request" means a request to ESS for searches including any request generated directly or indirectly using software provided by ESS on equipment owned, controlled or used by the Customer.

"ESS Service Timetable and Guide" means the document or documents published by ESS from time to time setting out when and how ESS will attend to the tasks set out in clause 5 of the Conditions.

"NRM" means the Queensland Department of Natural Resources and Mines.

"NRM Fee" means the fee charged by NRM for accepting lodgement of a settlement notice or a request to withdraw a settlement notice.

"Search Cost" means the greater of the cost referred to in the ESS Search Request and the charge made by a Search Provider for the provision of information. The Search Cost may include an ESS Data Input Fee if such fee is disclosed on the ESS Request.

"Search Provider" means an entity that conducts searches against its records or records to which it has access (e.g. Queensland Rail).

2. Formation of Contract

Delivery of an ESS Request to ESS (via the internet or otherwise) shall constitute an offer by the Customer to engage ESS as its agent to:

(a) outsource the conduct of the searches referred to in the ESS Search Request at a cost equal to the ESS Service Fee plus the Search Cost and otherwise on the terms contained in the Conditions; and

(b) lodge a settlement notice based on the ESS Lodgment Request with NRM at a cost equal to the ESS Lodgment Fee plus the NRM Fee and otherwise on the terms contained in the Conditions;

(c) lodge a request to withdraw a settlement notice based on an ESS Lodgment Request with NRM at a cost equal to the ESS Lodgment Fee plus the NRM Fee and otherwise on the terms contained in the Conditions, and as the case maybe.

Acceptance of the offer and creation of a contract shall be constituted by ESS attending to the required task or sending an invoice to the Customer (via the internet or otherwise).

3. Variation in Fees and Costs

The ESS Service Fee and the ESS Lodgment Fee shall not be increased unless at least 2 weeks notice has been given to the Customer. ESS invoices are not binding on ESS as regards Search Costs and are subject to increase in accordance with Search Costs charged by Search Providers and the fees charged by NRM.

4. Payment

ESS Service Fees, Search Costs, ESS Lodgment Fees and NRM Fees are payable by the Customer to ESS within 7 days of ESS sending an invoice to the Customer or such later date as is expressly agreed in writing by ESS. If not paid in full within 7 days of the date for payment, ESS has the right to charge an administration fee of \$10.00 per overdue ESS Request plus interest on the balance owing at the rate of 3% for the first month or part month that the fees are overdue and at the rate of 2% per month or part month thereafter. If not paid in full within 14 days of the due date, ESS has the right to:

- (a) debit such fees against a bank account nominated in writing by the customer; or
- (b) charge such fees and costs (including any administration fee and interest charge, and any applicable merchant fee) against the credit card nominated in writing by the customer.

ESS shall not charge or shall refund (as the case may be) unexpended Search Costs as at the time ESS receives a written request by the Customer to cancel searches.

5. ESS Service Timetable and Guide

ESS shall:

- (a) lodge or post search requests pursuant to an ESS Search Request;
 - (b) lodge with NRM any valid settlement notice produced pursuant to an ESS Lodgment Request; and
 - (c) lodge with NRM and valid request to withdraw a settlement notice produced pursuant to an ESS Lodgment Request,
- promptly in accordance with the ESS Service Timetable and Guide.

6. Authority, Appointment Warranty and Indemnity

The Customer:

- (a) irrevocably authorises ESS and its employees and consultants to make amendments to a settlement notice or a request to withdraw a settlement notice produced from an ESS Lodgment Request so as to put such settlement notice or request to withdraw a settlement notice in a form capable of immediate registration with NRM;
- (b) irrevocably appoints any Australian legal practitioner who is appointed by ESS from time to time, together with the legal practice in which the legal practitioner practices, as its unpaid town agent for the sole purpose of signing any settlement notice or a request to withdraw a settlement notice produced from an ESS Lodgment Request;
- (c) lodge with NRM and valid request to withdraw a settlement notice pursuant to an ESS Lodgment Request;
- (d) warrants that all information in an ESS Lodgment Request is correct, that lodgment of a settlement notice or a request to withdraw a settlement notice pursuant to an ESS Lodgment

Request is lawful and that there is reasonable cause for lodgment of the settlement notice or a request to withdraw a settlement notice; and

(e) indemnifies and shall keep indemnified ESS and its employees and consultants and any legal practitioner referred to in paragraph (b) against any loss or damages suffered by or claims against such party as a result of the lodgment of a settlement notice or a request to withdraw a settlement notice pursuant to an ESS Lodgment Request or the continuation of the settlement notice. (Section 55 of the Property Law Act 1974 (Qld) applies in relation to this obligation.)

ESS has no obligation to:

(a) attend to an amendment of the type contemplated in paragraph (a); and

(b) lodge a settlement notice or a request to withdraw a settlement notice produced from an ESS Lodgment Request if such notice is not accepted by NRM.

7. Limit on Liability

To the extent permitted by law, ESS assumes no responsibility or liability for incorrect searches or a delay in provision of search results due to the conduct or omission of the Customer, a Search Provider or any party other than ESS or its employees. ESS does not provide:

(a) any advice regarding necessary or available searches;

(b) any interpretation of search results;

(c) any advice regarding the form or contents of settlement notices or a requests to withdraw a settlement notices;

(d) a settlement notice preparation service or a request to withdraw a settlement notice preparation service; or

(e) any other type of legal service.

8. Intellectual Property

No rights in or licence to use any intellectual property is conferred on the Customer except for the licence to use software provided by ESS to make an ESS Request. However, ESS may revoke such licence on 2 weeks notice without reason and with no notice if the Customer breaches or permits a breach of the Conditions.

The Customer shall not alter, copy, publish or disseminate an ESS Request or any part of it without the prior written consent of ESS.

9. Confidentiality

ESS agrees not to disclose any information contained in an ESS Request that is not (or will not become) available to the public except to its employees and contractors and Search Providers and their employees and contractors and then only for the sole purpose of obtaining search results.

10. General

Any contract that comes into being will be governed by the laws of Queensland and is not capable of assignment by the Customer.