

Real Estate Agency Subscription Agreement

Parties

IRE, we, us, our means IRE Pty Ltd ACN 158 167 590, contactable on legal@inspectrealestate.com.au.

Agency, You means you, the user, or the entity that you are signing for, known in this Agreement as the Agency, contactable on the email registered in association with the Agency's master Account.

Background

- This Agreement is between IRE and Agency in respect of the Solution.
- Capitalised terms in this document are defined at the end of the document in the section entitled "Definitions".

1. Signing

- This document will form a binding Agreement between you and IRE when you check the tick box that states "I have read and agree to these terms and conditions" or you execute the Authority to Proceed form provided by IRE, whichever comes first.
- By accepting these terms, you acknowledge that you have read and understood this document and have the authority to act on behalf of any person for whom you are using the Solution for. You are deemed to have agreed to this agreement on behalf of any entity for whom you use the Solution.

2. New agreement

The parties agree that:

- if there is a previous agreement between them in respect of the Solution's use by the Agency, that agreement is terminated; and
- this Agreement will take effect in respect of the Solution upon the acceptance of this document by the Agency. Acceptance of this agreement will occur at the earlier of:
 - you signing this Agreement or indicating your acceptance through the Platform sign up process;
 - you accessing the Solution after receiving this Agreement; or
 - you indicating your acceptance to us in writing.

3. Trusts

If the Agency is a trustee of a trust (Trustee), the Trustee is liable under this Agreement in its personal capacity and in its capacity as trustee of the trust and confirms that:

- all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Agreement on behalf of the trust and that this Agreement is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and

- no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

4. License to Solution

- By entering this Agreement, the Agency is granted a limited, non-exclusive and revocable license to access the Solution for the duration of this Agreement, in accordance with the terms and conditions of this Agreement.
- The Agency agrees to use the Solution for its own business purposes only in accordance with the terms of this Agreement.

5. Term and termination

- The initial term of this Agreement shall commence when this Agreement is executed by both parties and shall continue for a period of 30 days.
- Following the initial term, the term of this Agreement shall automatically renew for further three month periods until:
 - it is terminated in accordance with the termination provisions in this Agreement; or
 - the Agency provides no less than 3 months written notice of permanent cancellation of this Agreement to IRE.
- If either party breaches any provision of this Agreement, the other party may give that breaching party a written notice requiring them to remedy the breach. If the breaching party does not remedy the breach within 10 Business Days of receiving such a notice, the other party may terminate this Agreement.
- IRE may terminate this Agreement for any reason with 10 business days of written notice to the Agency.
- Either party may immediately terminate this Agreement by notice to the other party if the other party suffers an Insolvency Event.
- We may terminate this Agreement immediately by notice to you if you commit any breach of any of your obligations under this Agreement and, in our view, the breach is incapable of being remedied.

Effects of Termination

- On termination of this Agreement, the licence will terminate and you must immediately:
 - cease all activities related to the Solution;
 - upon request, destroy all documents and other materials (including all copies) in your possession relating to the Solution; and
 - do any further things as may be reasonably required us to protect our right, title and interest in the Solution.

6. Agency status

- The Agency warrants that it holds all current licenses, certifications and registrations to operate as a real estate agency in each of the jurisdictions in which it has offices.
- The Agency warrants that all information that it uploads to the Solution is legal and accurate and that it will not upload any offensive, defamatory, misleading or false information.

7. Authorised users

- The Agency may create Authorised Users.
- The Agency is solely responsible for the security of the usernames and passwords associated with its Authorised Users, including where restriction of access is appropriate due to a change in the Agency's staff. The Agency will not provide access to IRE's competitors and will delete previous staff users. The Agency is responsible for ensuring that its Authorised Users comply with this Agreement in full.

8. Setup

In respect of the Solution's setup, IRE will only be responsible for duties specifically set out in this document.

9. Solution use undertakings

The Agency agrees and undertakes not to use (or allow any third party to use) the Solution to engage in any conduct that is unlawful, insulting, threatening, abusive or in a way that is deemed unreasonable by IRE at its sole and absolute discretion.

10. Feature and product specific terms

The Agency agrees to only use the Solution as it was designed and intended to be used in accordance with any instructions, including any manuals or guidelines provided by IRE.

Electronic Messaging

- The Agency will permit IRE to connect the Solution to its email systems in order to access functionality inherent to the Solution.
- The Agency agrees that IRE is not responsible for the performance of the Agency's email systems.
- The Agency must not use the Solution for unsolicited or unreasonably frequent or voluminous electronic communications.
- IRE reserves the right to limit or suspend access (without any refund being applicable) to the Agency if it is using the Solution inappropriately.
- The Agency agrees and acknowledges that it is the responsibility of the Agency to ensure that all electronic communications sent through or in connection with the Solution feature an unsubscribe facility (actioned within 5 Business Days) and the identification of the sender, being the Agency, and that the Agency complies with the requirements of the Spam Act when sending electronic communications through the Solution.
- The Agency warrants that any Messaging it does with the Solution are compliant with all relevant laws, regulations and industry codes of practice.

Forms and Notices

IRE may make common forms and notices available electronically through the Solution. The Agency takes full responsibility for how it uses these forms, and warrants that any use of the forms and notices is compliant with its local laws, regulations and industry codes of practice.

Analytics

- The Agency authorises IRE and its Licensees to use anonymised Data about its use of the Solution for any purpose, including but not limited to providing analytical and benchmarking services and marketing claims regarding the Solution or the real estate market.

- IRE makes no warranty as to the accuracy of analytical data provided by the Solution and reserves the right to remove any analytical and benchmarking data at any time without notice.

11. Features

- The Solution offers a number of enhancements and discrete products (**Features**) which the Agency can subscribe and unsubscribe to as they wish. Each Feature:
 - May be subject to additional terms and conditions, including those set out in this clause;
 - Is only available within the Solution and unless advised otherwise, won't be offered as discrete software; and
 - May attract an additional fee (see [URL](#)).

Subscribing and Unsubscribing From Features

- Certain Features are only available through the Solution by electing to switch them on and pay the associated fee. Prior to activating a Feature, you must ensure that you're aware of what the Feature does and how it may be implemented.
- Where you activate a Feature within the Solution, you agree to be bound by the terms which relate to that Feature in this clause 11, and any other terms you're notified about at activation.
- You may subscribe and unsubscribe from a Feature at your discretion. You will still have access to the Feature for the period in which you have made payment.
- We are under no obligation to make changes, updates or improvements to any Features that you activate, and they are provided on a strictly 'as is' basis.

11.1 AppChecker

AppChecker Generally

- AppChecker allows Agencies to manage rental applications 'end to end' from within the Solution, providing a number of enhancements including (but not limited to):
 - Interactive application process for prospective tenants;
 - Intuitive management of elements like employment, property and financial history;
 - Sending reference and information requests via email and messaging;
 - Automated input of responses to requests;
 - Step by step management of the internal application process; and
 - Built-in algorithms to determine affordability ratios, tenant suitability and comparing applicants.
- Where you choose to activate the AppChecker Feature within the Solution, you agree to the additional terms set out in this clause.

Calculation Features

- Appchecker offers a number of features which take input from the Agency and/or prospective tenants and provide meaningful data which Agencies may use in determining suitability. These include (but aren't limited to) the affordability ratio, comparison scores, joint income and other metrics relevant for applications (together, the **Calculation Features**).

- You acknowledge that many of these features are experimental and should not be solely relied upon in making a decision on your application.
- You must not share any metrics, information or data generated or displayed through Calculation Features outside your Agency, and particularly not with any potential applicants.
- You acknowledge and agree that:
 - The Calculation Features are only designed as an aid to the application process;
 - You must still do your own independent research and use your own judgement when determining tenant suitability, affordability and comparing tenants for properties;
 - Calculations Features may change, update or break without warning;
 - You won't rely solely on the Calculation Features to determine tenant suitability; and
 - IRE will not be held liable for any decisions made based on the Calculation Features.

Automated Requests

- Appchecker will allow you to send requests to parties within the tenancy application workflow, such as referees, previous agencies and employers (**Automated Requests**).
- Automated Requests are sent via the Solution and designed to integrate with AppChecker.
- Where you use Automated Requests, you agree that:
 - You will only send Automated Requests to those parties for whom you have permission from the applicant to contact;
 - You will only enquire about information you are permitted to receive by law, and which is only reasonably necessary to complete the application process;
 - You will follow up with contacts independently of Automated Requests if you have doubts that they may not have received the request;
 - Automated Requests are still in the early stages of development and implementation, so they may not be free from errors, bugs or defects; and
 - You are responsible for anything sent or received using Automated Requests.
- We will not be liable to you or any third party for a failure or defect in the Automated Request function.

File Uploads

- Appchecker offers the capability for both agents and applicants to upload files (including documentation) to the Solution.
- Files uploaded to Appchecker will be stored, managed and maintained in line with the terms of clause 19, 20 and our Privacy Policy as amended from time to time. You agree and warrant that you will comply with any data management, security or privacy obligations set out in this Agreement or elsewhere which are applicable to you.
- If you are uncomfortable or unwilling to have documentation stored via Appchecker, you must not use the functionality within the Solution, nor offer it to your customers and associated third parties.

- While we do require that all End Users agree to certain terms and conditions prior to interacting with Appchecker, it is your responsibility to make them aware of any relevant terms under this Agreement wherever possible, particularly in relation to management of sensitive and/or identifying documents.
- You fully release and indemnify us for any and all claims by an End Users in relation to your request, use or storage of uploaded files.

Reports

- Appchecker offers the capability to generate reports based on various functions, metrics and information within the Solution.
- Where you use any report generation features, you acknowledge and agree:
 - reports are predominantly based off information you, or related End Users, have provided to the Solution;
 - reports aggregate and summarise existing information and are only as accurate as the data which has been provided;
 - reporting functionality could be experimental and may be prone to error;
 - reports may be re-formatted, altered, updated or removed completely at our complete discretion; and
 - to indemnify and hold us harmless from all liability resulting from your use of the reports and report generation features.

Automated Functions

- Appchecker offers several other automated functions, including (but not limited to) event-driven actions and template communications (**Automated Functions**).
- You acknowledge and agree that:
 - you are responsible for the specifications of any Automated Functions and must test those functions to ensure they operate as expected prior to using them in a business setting;
 - you control the form and content of Automated Functions; and
 - we are not responsible for your use or misuse of Automated Functions.

11.2 TenantApp

- TenantApp is a mobile-based application which provides a number of features to both agents and potential tenants. For an Agency using this Feature through the Solution, these include (but aren't limited to) the ability to:
 - list properties for easy searching by End Users;
 - allow End Users to enquire about a property within the application;
 - facilitate communications between the Agency and the End User;
 - track applications in TenantApp through the Solution; and
 - apply machine learning algorithms to listings.
- Where applicable, IRE collects data from TenantApp's users pursuant to TenantApp's terms of service between IRE and its customers, which incorporates IRE's Privacy Policy governing collection and processing of TenantApp users' data.

- In accordance with IRE's Privacy Policy and TenantApp's terms of service, the TenantApp users (which are mutual customers of both parties) give IRE consent to share their data, including personal data (**Shared Personal Data**) with the Agency. For the purpose of this clause, "share" includes the ability for the Agency to process, download and copy the mutual customer's data.
- End User data provided to you through TenantApp will be subject to the same requirements in relation to data, security and privacy as set out elsewhere in this Agreement.
- Where you choose to utilise TenantApp through the solution, you also agree to TenantApp's Terms of Use as published and amended from time to time at [\[link\]](#).

Communication

- You must monitor the Solution to receive Communications from End Users in relation to properties.
- We take no responsibility for, and you release us from any claims regarding, your failure to send or receive Communications with an End User which results in a negative outcome for you or your clients.
- Each party will provide any assistance reasonably required to enable the other party to remedy and report any breaches and/or to comply with requests from mutual customers to exercise their rights under all relevant legislation within the time limits imposed by such laws.

12. Third party services

Third Party Services Generally

- The Solution is intended to be used in conjunction with Third Party Services. By entering into this Agreement, the Agency agrees to comply with the terms & conditions of any Third Party Service they utilise (including any eligibility criteria specified by the Third Party Service from time to time), and agrees that a breach of the Third Party Service's terms will constitute a breach of this Agreement.
- IRE will have the right at its sole and absolute discretion to provide platform reporting metrics about the Solution in aggregated and de-identified form to any third party.
- The Agency agrees that the use of the Third Party Services by its customers' and applicants may affect the way that its customers interact with the Solution and that its customer's use of the Solution may be limited, prohibited or restricted due to Third Party Services.
- If a Third Party Service provides a Button on its website, the Agency acknowledges that enquiry information collected via the lead capture form screen will also be provided to the Third Party Service, together with the associated Data. If the Agency does not wish this to occur, its sole option is to cease using the Third Party Service's Button.
- The Agency licenses IRE to provide the Data to Service Facilitators for the purpose of enabling the Service Facilitators to help provide the Solution.
- We may also offer augmented functionality through interfacing, providing or obtaining data, or otherwise co-operating with a third party and their software and/or services (**Integration**).

Integrations

- The Solution currently integrates with several parties for enhanced functionality, including (but not limited to) the following Integrations:

- **Equifax** provides the ability to access identity databases, perform credit checks and get access to information on individuals.
- Several of the Integrations may have access to some Data and Personal Information. By using the Solution, you expressly authorise us to provide any Data and Personal Information to Integrations for the purpose of providing the Solution.
- You acknowledge that the third parties who control the Integrations may do the following and you agree to the Integrations performing all of the below.
 - Use Data and Personal Information to improve their services;
 - To the extent permitted by law, use, sell, license, distribute and disclose de-identified and/or aggregated Data and Personal Information; and
 - Perform fraud screening, verify identities and verify Data and Personal Information for use across their network;
- While we offer the Integrations and may have agreements with the third parties to whom they relate, we only have control over the Integrations to the extent permitted by the Solution.

13. Confidentiality

Each party acknowledges and agrees that:

- the Confidential Information is secret, confidential and valuable to the Discloser;
- it owes an obligation of confidence to the Discloser concerning the Confidential Information; and
- it must not disclose the Confidential Information to a third party except as permitted in this Agreement.

14. Changes to terms

IRE may update the Pricing Schedule or the terms of this Agreement at its discretion by providing written notice to the Agency no less than 10 Business Days before this Agreement is to automatically renew. The updates will take effect after the renewal. Where the Agency does not accept such changes it must immediately notify IRE. Such notice of non-acceptance will cancel the automatic renewal of this Agreement, and this Agreement will cease at the end of the term in which IRE gave notice of changes.

15. Discretion over features

We reserve the right to upgrade, maintain, tune, backup, amend, add to or remove items from, redesign, improve or otherwise alter the Solution (including offering new Features) at our sole and absolute discretion.

16. Software as a service

- The Agency agrees that no “back-end” access to the Solution is available to the Agency unless expressly agreed in writing between the parties.
- You shall not use, or permit any other person to use:
 - any method to circumvent the provisions of this agreement or to obtain Features in excess for those in which you have purchased; and
 - any mechanism to exceed the amount of resources assigned to you (or conceal any such activities).

Hosting the Software

- You acknowledge and agree that:
 - the Solution is accessible online and is built as a '*cloud-based*' application;
 - we require elements of the Solution to be hosted by a third-party provider; and
 - this is reasonable considering the nature of the Solution, and that we would not be able to deliver the Solution in its current or future form and to the standard necessary if we did not utilise the hosting services of third-party providers.
- We use Microsoft Azure as a third-party provider for elements of the Solution. Servers are:
 - Managed and maintained by Microsoft;
 - Where possible, located in Australian data centres; and
 - Secured by Microsoft software and technology.
- You release and indemnify us fully for any damages you or an End User incurs as a result of the mismanagement, negligence or any other acts or omissions by Microsoft in their provision of servers, hosting and cloud technology to us.
- You acknowledge that as Microsoft is a reputable and '*enterprise-grade*' vendor, our use of their services and reliance on their technology is reasonable in the circumstances. If you do not agree with this assertion at any time, your sole and exclusive remedy is to terminate your use of the Solution. Your continued use of the Solution and storing of Data (including Personal Information and End User Data) is taken as a current and continuing agreement to the acknowledgements in this clause.
- We reserve the right to nominate a different server, third-party provider or cloud-based architecture at any time in our sole discretion.

Unintentional inaccessibility

From time to time, without notice, access to all or part of the Solution may be disrupted or limited. During such an interruption, we will use reasonable endeavours to restore access to the Solution as soon as practicable. Nothing in this agreement gives us any obligation or liability to you in any way whatsoever for unintentional inaccessibility.

Intentional inaccessibility

We reserve the right to make some or all of the Solution inaccessible from time to time as is required for upgrades, maintenance and updates. We will use reasonable endeavours to provide you with advance notice of any inaccessible period but you accept that this may not always be possible and we are not liable for any harm or damage you may suffer during an interruption.

Errors

- You acknowledge and agree that there may be technical or administrative errors in the information on the Solution, including but not limited to errors with respect to product description, calculations and availability.
- We reserve the right to do any of the following, at our absolute discretion, without notice:
 - correct any errors in the Solution;
 - make the Solution inaccessible to work on errors;
 - update the Solution;
 - remove and/or replace parts of the Solution;

- move or re-organise data from one part of the Solution to another; or
- any other act or thing reasonably necessary to ensure that errors are corrected, and the Solution continues to operate as intended.

17. Commercial information

The Agency warrants that all information it provides to IRE is complete and accurate in all respect including but not limited to commercial information.

18. Support

IRE will not provide any support or maintenance except as provided for explicitly in this Agreement.

19. Data

- The Agency is responsible for the accuracy, quality and legality of Data and the Agency's acquisition of it, and the users that create, access and/or use Data.
- IRE shall be authorised to permanently delete Data:
 - where outstanding Fees remain unpaid under this Agreement; or
 - where that Data is Personal Information and that individual has requested for the Personal Information to be deleted.
- IRE bears no responsibility for maintaining records of the Data for the Agency's benefit and it is the Agency's sole responsibility to ensure that it has backups and/or redundant access to the Data stored in the Solution.
- IRE may limit the amount of data that the Agency stores in the Solution and shall advise the Agency of such. Data that is stored with IRE shall be stored according to generally accepted industry standards.
- IRE does not warrant that it is able to backup or recover specific Data from any period of time unless so stated in writing by IRE.
- Upon request, IRE shall export all the Data and return same to the Agency by way of physical media or download at the discretion of IRE.
- The Agency shall pay IRE for any reasonable expenses incurred in doing so in advance of IRE providing the Data to it.
- Where you are served with a Technical Assistance Request, Technical Assistance Notice or Technical Capability Notice under the *Telecommunications Act 1997*, a Computer Access Warrant under the *Surveillance Devices Act 2004* (Cth), or any other notice or document which would compel you to access, or provide access to, the Solution on behalf of any third party, you shall take all actions available to you to dispute such a notice. Any dispute shall include a submission that, where the notice or warrant relates to our services, that notice should instead be served on us.
- When using the Solution, any submitted Data or other End User Data is:
 - transferred using the Secure Socket Layer (SSL) protocol to the servers on which the Solution is hosted; and
 - encrypted at rest (once it arrives on the server).
- All Service and Software data is backed up regularly using our internal backup procedures. While we make all efforts to ensure that backups occur regularly, we make no guarantees that data provided to the Solution will be backed up at any particular interval of time, nor that the backups are safe from hostile, malicious or state-sponsored cyber-attacks.

- By using the Solution and providing Data in your interaction with the Solution, you understand, acknowledge and agree that we:
 - may use that Data in any way necessary to ensure you have the appropriate access and use of the Solution;
 - may aggregate, distribute, prepare derivative works of, display, perform or otherwise use the Data in connection with the Solution or our business;
 - may share Data with any third parties to whom we rely upon in providing and/or running the Solution;
 - may share Data with any third parties to whom you allow within your account as an Integration;
 - may share Data with any of our related bodies corporate for the purposes of furthering our commercial and business interests; and
 - may share Data with our partners, affiliates and other associated third-parties in a manner consistent with our Privacy Policy.
- While the Solution may allow you to export certain aspects of the Data, nothing in this Agreement should be construed as an entitlement to export Data from the Solution at will.
- The ability to remove any Data or other content on the Solution in a downloadable and/or human readable format is wholly dependent on:
 - the current functionality of the Solution;
 - the status of any servers, infrastructure or other storage medium used to deliver the Solution;
 - the Features available to the Agency in question; and
 - our absolute discretion to enable export functionality from time to time.
- You acknowledge and agree that:
 - the Solution is not a substitute for keeping complete records on your own storage medium and/or in hard copy, and warrant to us that you will not use it as such;
 - the Solution may be subject to limitations, delays and other problems inherent in the use of communications facilities (such as network outages, congestion and hardware failures);
 - we may perform periodic penetration testing on the Solution to satisfy our internal security standards;
 - information you request from us may not be available or may not be provided at the time of request, and we don't guarantee that any information provided will be comprehensive or complete;
 - we may include your name and trademarks in a list of subscribers, online content or promotional materials;
 - we may verbally communicate your status as a customer of ours from time to time;
 - we will not be responsible for any staff member or End User having appropriate devices and internet connections to access the Solution; and
 - we will not be responsible for any physical devices, internet connections, communications or anything else used to connect or access the Solution.

20. Security

- IRE will take reasonable steps to ensure that the Solution is secure from unauthorised access consistent with generally accepted industry standards.

- **Sufficient Security**

You shall use proper security measures in connection with your use of the Solution. This shall include (but not be limited to) the following:

- Setting strong passwords and access control mechanisms;
- Safeguarding access to all logins and passwords (preferably with an industry-grade two-factor or hardware authentication system);
- Verifying the trustworthiness of persons with account access information; and
- Implementing any relevant procedures recommended by the Department of Industry, Innovation and Science (see - <https://www.business.gov.au/Risk-management/Cyber-Security>) and the Australian Cyber Security Centre (see - <https://www.acsc.gov.au/> and <https://cyber.gov.au>) from time to time;
- Performing regular checks on user accounts;
- Implementing appropriate policies and procedures to safeguard access within your organisation; and
- Undertaking adequate security training with all of your staff.

- **Notifiable Data Breaches**

You shall notify in the manner specified in clause 40 within 48 hours if you learn of any security breaches relating to the Solution. If the breach(es) could constitute a Notifiable Data Breach under Part IIIC of the Privacy Act, you shall notify us within 3 hours of the breach (suspected or confirmed) coming to your attention. You shall aid us fully in any subsequent investigation or legal action taken as a result of the breach.

- **Malicious Code**

It is your responsibility to protect your systems and the areas of the Solution which are under your control from Malicious Code. The Agency agrees that it will not do anything to prejudice the security or privacy of IRE's systems or the information on them.

- **Internet Services**

You are responsible for the security of any and all internet connections used to access the Solution, and the security of any device on which the Solution is accessed.

- **Cyber Attacks**

While we may take reasonable measures to secure the Solution and the infrastructure on which the Services run from cyber-attacks and Malicious Code, new attack vectors and exploits are created or used by malicious actors every day. By using the Solution and Services, you acknowledge that we cannot be expected to anticipate these new vectors but can only employ industry-standard measures to mitigate the risks. Where we are actively employing measures to combat cyber-crime and an exploit or data loss occurs, you agree to hold us completely harmless for any consequences of same.

- **Cyber Insurance**

We strongly recommend you obtain and maintain electronic and computer crime insurance to the appropriate level assessed by a reputable insurance company.

- **Indemnity**

You release and indemnify us for any claim, action or liability resulting from your failure to comply with this clause 20. You acknowledge that while we may secure the Solution as part of the Services, we are unable to protect you from a failure to properly secure your systems, practice good digital hygiene or educate your staff.

21. Pricing

- The Agency agrees to pay the Fees for the Solution as described in the Pricing Schedule as amended from time to time, including the Fees required for any activated Features.
- The Agency agrees and acknowledges that the use of some Features incurs extra Fees on a per use basis as set out in the Pricing Schedule.
- IRE reserves the right to on-charge any extra costs payable to Service Facilitators incurred in connection with the Agency's use of the Solution, regardless of what is in the Pricing Schedule.
- To the fullest extent available under the law, no refunds shall be issued in respect of Fees paid.
- All Fees in the Pricing Schedule are exclusive of GST unless otherwise indicated.

22. Payment in advance

Where Fees are payable in advance, no services shall be commenced or provided unless a tax invoice has been issued and paid in full.

23. Payment terms

Invoices will be issued on the first day of each month for the previous month's subscription and third party usage. Invoices will be paid by the payment method specified by IRE at the sole and absolute discretion of IRE.

24. Late payment

If the Agency fails to pay IRE any Fees on the due date for payment, IRE may immediately do any or all of the following, without any liability, until all overdue Fees are paid:

- charge the Agency interest on the overdue amount at the default contract rate specified by the Queensland law society from time to time;
- suspend the Agency's use of any or all of the Solution;
- terminate this Agreement without any obligation to refund the Agency any money in respect of the cancellation, even if the contractual term has not expired;
- initiate proceedings against the Agency to recover the overdue amount (despite any dispute resolution clause in this Agreement); and
- recover all costs in relation to any action taken against the Agency to recover overdue amounts, including but not limited to legal costs and outlays on a full indemnity basis.

25. Access

- By accepting the terms of this Agreement the parties agree that IRE will use reasonable endeavours to provide the Agency access to the Solution.
- IRE provides no warranty for ongoing, uninterrupted or fault-free access to the Solution.
- From time to time, without notice, access to all or part of the Solution may be disrupted or limited. During such an interruption, IRE will use its reasonable endeavours to restore access to the Solution as soon as practicable.

- IRE reserves the right, without notice, to make some or all of the Solution inaccessible from time to time as is required for upgrades, maintenance and updates.

26. Intellectual Property

- All title, ownership, rights and Intellectual Property rights, including copyright in relation to the Solutions is owned or used under licence by IRE.
- Without IRE's express written consent, you agree that you must not:
 - directly or indirectly alter, replicate, copy, recreate, create derivative work from, decompile, reverse engineer, reserve assemble, reserve compile, enhance, interfere with the Solution or with part of the Solution or otherwise obtain, modify or use any source or object code, architecture, or algorithms contained in the Solution or any documentation associated with the Solution;
 - interact with any IRE trade mark (whether registered or not) that could cause any adverse effect to our ownership and rights to the Intellectual Property; or
 - copy or reproduce, or create an adaptation or translation of, all or part of the Solution in any way, except to the extent that reproduction occurs automatically through the ordinary use of the Solution in accordance with this Agreement;
 - incorporate all or part of the Solution in any other webpage, site, application or other digital or non-digital format;
 - (subject to other rights explicitly granted under this Agreement) sell, license, sublicense, lease, rent, distribute, disclose, permit access to, or transfer to any third party, whether for profit or without charge, any portion of the Solution on any medium;
 - do anything that will infringe the Intellectual Property rights of any third party; or
 - attempt to do, or allow any other person to do or attempt to do, any of the above.

Infringement

- You must notify us immediately if you become aware of any infringement or threatened infringement of the Solution or any Intellectual Property.

Ownership of your Data

- You will at all times during the course of this Agreement remain the exclusive owner of the Intellectual Property rights in your Data.
- In respect of any Data you submit to the Solution, you warrant to IRE that you own, or have the right to use, the Intellectual Property rights in that Data and that IRE's use of your Data in accordance with this Agreement will not infringe the Intellectual Property rights of any third party. You agreed to indemnify IRE against any loss or damage that IRE may suffer due to any inaccuracy in or breach of the warranty given by you in this clause.

Licence over Data

- You grant IRE a non-exclusive, irrevocable, worldwide, perpetual, unlimited, assignable, sub-licensable, fully paid up and royalty-free right to copy, prepare derivative works of, improve, distribute, publish, remove, retain, add to, process, analyse and use and commercialise, in any way now known or in the future discovered (subject to Privacy Law), any Data. This license shall survive termination of this Agreement.

Transfer of Intellectual Property

- IRE owns the Solution's Intellectual Property, and subject to point titled Ownership of your Data above, in any circumstances where IRE does not automatically have such ownership, any rights you may have in the Solution shall automatically transfer to IRE. You will do all things necessary to ensure that full legal ownership of the Solution's Intellectual Property passes to IRE.
- For the term of this Agreement, IRE grant a limited, revocable licence to you to use IRE trade marks for the purpose of advising your use of the Solution and in accordance with any brand usage guidelines that IRE may publish from time to time.

27. Privacy

- You acknowledge that IRE will receive and/or disclose Personal Information concerning the Agency's customers from you or the client and you agree that you or any of your Authorised Users will hold the Personal Information in such a manner that will not breach:
 - IRE's Privacy Policy;
 - the Privacy Act 1988 (Cth); or
 - relevant data protection laws
- IRE may amend IRE's Privacy Policy in our sole discretion. If the IRE Privacy Policy is amended, IRE will notify you. If the changes to the privacy policy will affect a process of a specific party, we will use reasonable endeavours to notify the relevant party of the particular change.
- If Personal Information is disclosed to you in the course of this Agreement, you agree that you will not:
 - sell the Personal Information to any third party; or
 - distribute Personal Information to any other party other than third parties who are contractually obliged to only use the Personal Information for the purposes contemplated by this Agreement.
- Both parties agree to remove Personal Information concerning an individual if requested to do so by that individual. The parties will notify the other party of the individual's request so that the other party can also remove the Personal Information.

28. Agreement breaches

IRE may immediately revoke or suspend the Agency's use of the Solution if the Agency breaches this Agreement. IRE will ordinarily advise the Agency of any suspension of the Agency's access to the Solution, however it is not under an obligation to do so.

29. Unforeseen Event

- The obligations of IRE under this Agreement are suspended to the extent that an Unforeseen Event affects them and as long as the Unforeseen Event continues. The occurrence of an Unforeseen Event does not suspend the obligation of the Agency to pay any money under this Agreement.
- A party claiming an Unforeseen Event must use their best endeavours to remove, overcome or minimise the effects of that Unforeseen Event as quickly as possible.
- If an Unforeseen Event continues for more than 30 Business Days, IRE may terminate this Agreement by notice in writing to the Agency of not less than 10 Business Days.

30. Dispute resolution

- If any Dispute arises, then either party may notify the other of the Dispute with a Notice. Within 10 Business Days after a Notice is given, a representative (with the authority to resolve the dispute) of the Agency and IRE must meet and seek to resolve the Dispute.
- If the representatives of the Agency and IRE do not resolve the Dispute within 20 Business Days, the Dispute will be submitted for mediation in accordance with, and subject to, *The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules*.
- If the Dispute is not settled within 20 Business Days of the submission to mediation (unless such period is extended by agreement of the parties), it will be submitted to final and binding arbitration in accordance with, and subject to, *The Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Arbitrations*.
- When the Dispute is submitted to mediation or arbitration, each party will pay its own Costs for the proceedings. The parties will share equally the Costs payable to the Institute of Arbitrators & Mediators Australia.
- Subject to this section, a party must not bring court proceedings in respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause.
- Nothing in this section prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.
- Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this Agreement and any other agreement between the parties.
- The obligations set out in this section are available to the fullest extent available under the law, but subject to the Non Excludable Conditions to the extent of any inconsistency.
- The dispute resolution procedure set out in this section will not apply in any instance where IRE seeks to enforce a debt against the Agency in connection with this Agreement.

31. Limitations and indemnities subject to the law

The rights and obligations set out in this document in clause 33 “Limitations of liability” and clause 37 “Indemnity” are subject to Non Excludable Conditions to the extent of any inconsistency, and apply to the fullest extent permissible by law. The obligations of clauses 32, 33, 34, 35, 36, 37 and 38 survive termination of this Agreement.

32. Exclusion of implied guarantees, conditions and warranties

IRE excludes all implied guarantees, conditions and warranties from this Agreement, except any Non Excludable Condition.

33. Limitations of liability

The Agency agrees that it uses the Solution at its own risk. IRE excludes all other liability to the Agency for any Costs, including Consequential Loss, suffered or incurred directly or indirectly by the Agency in connection with this Agreement or Solution, including in connection with:

- the use of any Solution functionality connected with maps, navigation or routing;
- the service or functionality provided by a Service Facilitator;
- the Agency’s use of an electronic signature or acceptance;
- the use of the Solution by Authorised Users;
- the Data stored on the Solution;
- the Spam Act or Privacy Law;

- IRE's compliance with any enforcement instruments, such as Technical Assistance Requests, Technical Assistance Notices or Technical Capability Notices under the *Telecommunications Act 1997*, a Computer Access Warrant under the *Surveillance Devices Act 2004* (Cth) or any other documents of similar effect (including from the subsequent actions or omissions of the government entity enforcing such a notice);
- computer virus, trojan and other malware in connection with the Solution;
- any breach of security that results in unauthorised access to or corruption of Data;
- the Services being inaccessible to the Agency for any reason;
- incorrect or corrupt Data, lost Data, or any inputs or outputs of the Solution;
- any unauthorised activity in relation to the Solution;
- the Agency's use of or reliance on the Solution for a purpose other than the business purposes of the Agency or the reasonably expected purpose of the Solution;
- any breach of this Agreement by the Agency;
- IRE's breach of this Agreement;
- the use of the Solution by the Agency; and
- any act or omission of IRE, its personnel or any related body corporate under or in relation to this Agreement.

The exclusion in the foregoing clause applies however the Costs are caused and whether they arise in contract, tort (including by IRE's negligence, or if applicable, that of its Licensees), or under statute.

We make no guarantee as to the safety, security, merchantability, fitness, reliability or usability of any third party Integrations in the Solution.

Where you suffer any damages, loss or injury due to the acts or omissions of an Integration, your sole and exclusive remedy is to pursue the owner of that Integration for those damages. You release and discharge us for all liability relating to any Integration, except to the extent where we have contributed to any damage, loss or injury.

34. Limitations of liability (Licensees)

To the fullest extent available under the law, and to the fullest extent that it is applicable, the limitation of liability in section 33 of this document will apply to the Licensees.

35. Where a condition cannot be excluded

Where a Non Excludable Condition is deemed to apply, to the fullest extent possible under the law, IRE (and if applicable, IRE's Licensees) limits its liability for any breach to:

- in the case of goods:
 - the re-supply of the goods or payment of the cost of the re-supply of the goods; or
 - the replacement or repair of the goods or payment of the cost of replacement or repair of the goods; and
- in the case of services:
 - the re-supply of the services affected by the breach; or
 - the payment of the cost of such re-supply of the services.

36. Where a condition cannot be excluded (Licensees)

To the fullest extent available under the law, and to the fullest extent that it is applicable, the clause in section 35 of this document will apply to the Licensees.

37. Indemnity

- To the fullest extent available under the law, the Agency indemnifies the Indemnified against all Costs suffered or incurred by the Indemnified, however caused, arising wholly or partially, directly or indirectly, in connection with this Agreement or the Agency's use of the Solution.
- Without limiting the generality of the indemnity above, the Agency agrees to indemnify the Indemnified against any Costs arising directly or indirectly from:
 - the Agency's breach of this Agreement;
 - the use of the Solution by any Authorised User;
 - the Agency or any authorised user's infringement of any third party Intellectual Property rights while using the Solution;
 - any harm to or claim by a third party arising directly or indirectly from the Agency's use of the Solution;
 - for non-compliance with any law, regulation or industry code of practice during the term of this Agreement;
 - any negligent or unlawful act or omission by the Agency in connection with the Solution;
 - IRE's or a third party's reliance on a misleading representation made by the Agency;
 - a contract in force between the Agency and a third party connected with the Solution or Third Party Service;
 - IRE's enforcement of its rights in connection with any alleged or actual breach of this Agreement by the Agency;
 - any breach of the Spam Act by the Agency
 - the Agency's breach of any Privacy Law;
 - the Agency's storing Data on the Service;
 - the Agency's compliance with any enforcement instruments, such as Technical Assistance Requests, Technical Assistance Notices or Technical Capability Notices under the *Telecommunications Act 1997*, a Computer Access Warrant under the *Surveillance Devices Act 2004* (Cth) or any other documents of similar effect (including from the subsequent actions or omissions of the government entity enforcing such a notice)
 - IRE providing access to Data, or a subset of the Data, to a person who has requested such access in accordance with Privacy Law;
 - any breach or loss of Data due to the Agency's failure to prevent a malicious attack on its systems;
 - IRE being obligated to correct Data upon request by a person in accordance with Privacy Law;
 - any complaints process initiated by a person under Privacy Law; or

- any other cost incurred by IRE as a result of a person pursuing rights conferred upon them by Privacy Law.
- The Indemnified may make a claim under this indemnity clause in relation to a Cost before having incurred the Cost, or before making a payment in relation to the Cost.
- The indemnity in this clause shall be in addition to any damages for breach of contract to which IRE may be entitled. Nothing in this indemnity clause shall be construed so as to prevent IRE from claiming damages in relation to the Agency's breach of any term of this Agreement.

38. Indemnity (Licensees)

To the fullest extent available under the law, and to the fullest extent that it is applicable, the indemnity in section 37 of this document will apply to the Third Party Services.

39. Electronic execution

The parties agree that this document may be executed electronically to form this Agreement and that any signature required directly or incidental to this document may be made electronically except where required to be physically made under law.

40. Agreement notices

- Each party may serve any Communication on the other party by sending it to that party's email address, as specified in this document.
- A Communication by email will be taken to have been received by the addressee 24 hours after the email was sent, unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address.
- The parties agree to send, receive and execute documents electronically and be bound by the terms of the *Electronic Transactions Act 1999* (Cth) and the *Electronic Transactions (Queensland) Act 2001* (Qld).

41. Governing law

The laws of the state of Queensland govern this Agreement and each party submits to the non-exclusive jurisdiction of the courts of Queensland.

42. Assignment

- IRE may assign this Agreement at any time with or without any notice to the Agency at its sole and absolute discretion. The Agency agrees to do all things reasonably necessary (including executing agreements and documents) to effect such assignment.
- The Agency must obtain the written approval of IRE before assigning its rights under this Agreement, and any purported assignment without such consent shall be deemed a breach of this Agreement.

43. Disclaimer

Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.

44. Amendment

The Agreement may only be amended:

- by providing 10 days notice by IRE; or
- as agreed in this Agreement.

45. Relationship

The relationship of the parties to this Agreement does not form a joint venture or partnership. The Agency warrants that IRE has no relationship with the Agency or any other party mentioned in this document, in respect of the Agency's use of the Solution.

46. Waiver

No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.

47. Further Assurances

Each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement and the transaction facilitated by it.

48. Counterparts

This document may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

49. Time

Time is of the essence in this Agreement.

50. Severability

Any clause of this Agreement, which is invalid or unenforceable is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.

51. Interpretation

Headings are only for convenience and do not affect interpretation. The following rules apply unless the context requires otherwise:

- the singular includes the plural and the opposite also applies;
- if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning;
- a reference to a clause refers to clauses in this Agreement;
- a reference to legislation is to that legislation as amended, re enacted or replaced, and includes any subordinate legislation issued under it;
- mentioning anything after includes, including, or similar expressions, does not limit anything else that might be included;
- a reference to a party to an agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives);
- a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- a reference to information includes information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets; and
- a reference to dollars or \$ is to an amount in Australian currency.

52. Definitions

Account

means the electronic account used by the Agency to access the Solution.

Agreement

means the legally binding agreement arising under this document.

Authorised User, Authorised Users

means a user authorised by the Agency to access the Solution in association with its Account.

Business Day, Business Days

means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the city of Brisbane, Australia.

Button

means a "Register to Inspect" Link or "Book an Inspection" button or other link to the Solution enabling application for an inspection of a property.

Communication, Communications

means any written communication including each Notice, consent, approval, request and demand under or in connection with this Agreement.

Confidential Information

means all information (whether or not it is described as confidential) in any form or medium concerning any past, present or future business, operations or affairs of either party, including, without limitation:

- all technical or non-technical data, formulae, patterns, programs, devices, methods, techniques, plans, drawings, models and processes, source and object code, software and computer records;
- all business and marketing plans and projections, details of agreements and arrangements with third parties, and agency and supplier information and lists;
- all financial information, pricing schedules and structures, product margins, remuneration details and investment outlays;
- all information concerning any employee, agent, contractor, supplier or agent of the relevant party;
- the party's policies and procedures; and
- all information contained in this document,

but excludes information that the other party can establish:

- is known by or is in the other party's possession or control other than through a breach of this document and is not subject to any obligation of confidence; or
- is in the public domain other than by a breach of this document or any obligations of confidence.

Consequential Loss, Consequential Losses

means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair), loss of opportunity or expectation loss, and any other form of consequential, special, indirect, punitive or exemplary loss or damages.

Cost, Costs

means any costs, expenses, losses, damages, claims, demands, proceedings, and other liability.

Data

means data that is provided to IRE by the Agency or uploaded to the Solution by the Agency, whether by the Agency itself, its customers or through automation or integrations with Third Party Services.

Discloser

means the party disclosing Confidential Information.

Dispute

means any dispute that arises between the Agency and IRE in connection with this Agreement.

End Users

means any customers or users who interact with the Solution by way of an application, web portal or interface.

Fees

means any amount payable by the Agency to IRE under this Agreement.

GST

has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Indemnified

means IRE and its directors, employees, contractors and agents.

Insolvency Event

means in respect of a party, the appointment of an administrator, a receiver or receiver and manager in respect of that party, an application to a court or an order for the winding up of the party, or the occurrence of anything analogous or having a substantially similar effect to any of the preceding events.

Intellectual Property

means all rights (present and future) conferred by common law, equity or statute (and all moral rights) connected with business names, computer software, confidential information, copyright, designs, domain names, formulas, inventions, knowhow, patents, trademarks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

Licensee, Licensees

means a third party licensee or supplier of the Solution, including a Third Party Service.

Non Excludable Condition, Non Excludable Conditions

means any guarantee, condition or warranty (such as the consumer guarantees implied by the *Competition and Consumer Act 2010* (Cth)), which cannot by law be excluded.

Messaging

means electronic communications in the form of a message including emails and SMS.

Notice

means a notice of Dispute which:

- includes, or is accompanied by, full and detailed particulars of the Dispute; and

- is delivered within 10 Business Days of the circumstances giving rise to the Dispute first occurring.

Personal Information

means information that is “personal information” in the meaning of Privacy Law.

Pricing Schedule

means the document previously provided to the Agency entitled “Product Pricing Schedule”, and as amended and published from time to time at the following URL: [URL].

Privacy Law

means:

- the *Privacy Act* 1988 (Cth); and
- any relevant data protection laws.

Privacy Policy

means the policy document found at [InspectRealEstate.com.au](https://www.inspectrealestate.com.au) as amended from time-to- time.

Service Facilitator, Service Facilitators

means third party service providers such as automated mail lodgement providers, Internet map providers, GPS navigation devices, and electronic messaging providers.

Solution

means software or mobile application products offered by IRE displayed on <https://wp.inspectrealestate.com.au/our-products/> or appearing in either the Apple App Store or the Google Play Store, as amended, updated or improved from time to time.

Spam Act

means the *Spam Act* 2003 (Cth).

Third Party Service, Third Party Services

means a third party licensee or supplier of the Solution that offers access to the Solution via its website, mobile site or application (such as a real estate portal or agency) for rental and/or sales applicants for properties, including by providing a Button on their website.

Unforeseen Event, Unforeseen Events

means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government provider, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a virus or other malicious code.