

**Customer** Please ensure that the Legal Company Name and NZBN match the details on the NZ Companies Office website – <https://www.companiesoffice.govt.nz/companies>

Company Name	NZBN
Trading Name	

**Business Address**

Physical Address	Suburb
State	Postcode
Postal Address (if applicable)	Suburb
State	Postcode

**Business Owner/Director/Principal**

Name	Position
Email	Phone

**Administrator** - The PropertyTree activation link, fee schedule and Start Guide will be emailed to this user  
 Tick if same as above

Name	Position
Email	Phone

**Agreement and Authorisation**

By signing below, the Customer (described above) agrees to be bound by the attached PropertyTree Pty Ltd Terms of Use, which I have read and understood.

Name	Role
Signature	Date

These Terms of Use were last updated on **19<sup>th</sup> July 2017** These Terms of Use apply to the access and use of the Service by Customer.

## 1 Definitions and Interpretation

1.1 In these Terms of Use the following definitions apply:

**Additional Services** means any services provided to Customer in addition to access and use of the Service, including but not limited to any consulting services, referral services, services in connection with integrating Approved Third Party Applications with the Service and any additional training services (which may include facilitation of training in connection with Approved Third Party Applications integrated or used with the Service).

**Administrator** means the person who is authorised by the Customer to access and use the Service under Customer's account and who is nominated by the Customer as the Administrator during the registration process for the Service.

**Aggregated Data** means Data which has Personal Information removed from it.

**Approved Third Party Application** means any third party software, application, product or service integrated with or used in conjunction with the Service from time to time with the approval of PropertyTree.

**Authorised User** means a person invited by the Administrator to access and use the Service under Customer's account.

**Confidential Information** of a party is information of a party or its customers which the party identifies as confidential or which would reasonably be regarded as confidential and includes without limitation information relating to the party's Intellectual Property Rights, organisational structure, financial position, personnel, policies and business strategies.

**Customer** means the party whose details have been entered as the customer during the registration process for the Service and any parent company of that party and each subsidiary of that party (being an entity in which the party holds at least 50% of the ordinary shares or common stock) as may be notified by the party to PropertyTree, and only for so long as the parent company or subsidiary remains a parent company or subsidiary of the party.

**Data** means the data which is input into the Service through the Customer's account when using the Service or through any Approved Third Party Application, including details of the Customer, each Authorised User, each property under management, property owners, tenants and other related data, which may include Personal Information of the Customer, each Authorised User or other persons.

**Fee Schedule** means the schedule of fees as provided to Customer and agreed by Customer during the registration process in which the fees applicable to the use of the Service are set out.

**Force Majeure** means any event caused by occurrences beyond a party's reasonable control, including acts of God, fire or flood, war, terrorism, sabotage, epidemics, governmental regulations, policies or actions enacted or taken subsequent to Customer's execution of the registration form for provision of the Service, or any labour, telecommunications, internet or other utility failure, interruption, shortage, outage, strike or curtailment or the acts or omissions of a third party.

**GST** means the tax imposed or assessed by the GST Act and its related legislation and includes any similar or substitute impost introduced in the future.

**GST Act** means the *Goods and Services Tax Act 1985* (New Zealand).

**Hosting Service Provider** means Microsoft Corporation (and its related companies) and any other person or entity PropertyTree may engage from time to time to provide data hosting and storage services in connection with the Service and Data and to provide the serving infrastructure which operates under the direction of PropertyTree.

**Implementation Fee** means the fee payable by Customer to PropertyTree in connection with setup of the Service and initial training in use of the Service as set out in the Fee Schedule.

**Intellectual Property Rights** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, trade marks, know-how, confidential information, patents, inventions and discoveries and all other rights (including moral rights) resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Personal Information** has the meaning given to that expression in the Privacy Act.

**Privacy Act** means the Privacy Act 1993 (New Zealand).

**PropertyTree** means Property Tree Pty Ltd (ABN:30 133 696 081) of Level 6, 29-57 Christie Street, St Leonards, New South Wales 2065, Australia.

**Service** means the online real estate management service accessible through the Website, and more accurately described on the Website.

**Service Fee** means the service fee payable by Customer for the Service as set out in the Fee Schedule.

**Start Date** means the date from which the Service is made available to Customer or as otherwise agreed between the parties.

**Terms of Use** means the agreement between PropertyTree and Customer for the Customer's access to and use of the Service, which comprises these terms (including as may be updated from time to time pursuant to clause 2), any other special conditions attached to these terms or provided separately by PropertyTree to Customer in connection with Customer's access and use of the Service, PropertyTree's Privacy Policy as published on the Website from time to time, and the Customer's registration and payment details.

**Website** means the PropertyTree website whose home page is currently accessible via URL <http://www.propertytree.com> (including all related web pages, sub-pages and URLs), any other website that may replace that website from time to time and any other application distribution platform (including mobile applications) through which the Service is provided or accessed.

1.2 In the interpretation of these Terms of Use, the following provisions apply unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any legislation includes any statutory modification or re-enactment of, and any subordinate legislation issued under, that legislation or legislative provision;
- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any party to these Terms of Use or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (e) a reference to dollars or \$ means the lawful currency of New Zealand; and
- (f) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these Terms of Use or any part of it.

## 2 Accepting the terms

- 2.1 By accessing and using the Service, Customer agrees to be bound by the most current version of these Terms of Use and PropertyTree's Privacy Policy published on the Website.
- 2.2 Customer may not use the Service and may not accept these Terms of Use if it is not of a legal age or capacity to form a binding contract with PropertyTree.
- 2.3 Customer should print or save a local copy of these Terms of Use for its records. Customer acknowledges that PropertyTree may update its Terms of Use from time to time, effective on publication, and Customer agrees to periodically check the Website to ensure it understands the requirements of the current version of the Terms of Use.
- 2.4 The party whose details have been entered as the customer during the online registration process for the Service enters into these Terms of Use on its own behalf and as agent for any other entity which at any time falls within the definition of Customer.

## 3 License to use Service

- 3.1 Subject to PropertyTree's acceptance of Customer's online registration for provision of the Service and Customer's compliance with these Terms of Use and payment of the Service Fee, PropertyTree grants Customer a limited, non-exclusive, non-transferable right to access and use the Website and the Service only for Customer's internal business operations on the terms set out in these Terms of Use and the PropertyTree requirements contained in the online registration form.

## 4 Access Credentials

- 4.1 PropertyTree will provide the Administrator with a username and password, which will enable the Administrator to access and use the Service on behalf of Customer. The Administrator must select his or her own password at the time of first use of the Service. Customer may change its Administrator by written notice to PropertyTree.
- 4.2 The Service allows the Administrator to invite Authorised Users to access and use the Service under Customer's account. The Administrator inviting an Authorised User to use the Customer's account will constitute authorisation of that Authorised User by Customer to use it. A username, linked to the username allocated to the Administrator and the Customer's account, will be created for each new or additional Authorised User. Each Authorised User must select his or her own password at the time of first use of the Service.

- 4.3 Customer acknowledges that it may be required to provide PropertyTree with certain Personal Information (which may include a name, email, address or property details or Personal Information relating to Authorised Users) to access and use the Service.
- 4.4 Customer must:
- (a) ensure that each Administrator and Authorised User keeps his or her username and password confidential and does not disclose it to any other person (and in order to improve the security of the Customer's account, amends his or her password from time to time);
  - (b) ensure that it can identify and manage each Authorised User entrusted with a username and password combination for Customer's account;
  - (c) refrain from authorising anyone to use Customer's account who is not either employed by Customer or under contract with Customer to perform functions similar to those commonly performed by employees;
  - (d) notify PropertyTree of the names of each Authorised User if requested by PropertyTree; and
  - (e) take all necessary steps to prevent unauthorised access to Customer's account and immediately notify PropertyTree of any unauthorised use of Customer's password or account or any other breach of security.
- 4.5 Customer is responsible for all activities that occur under its account, including all fees and charges in connection with that use. Customer is solely responsible for the actions of all Authorised Users and indemnifies, and will defend and hold harmless, PropertyTree, its affiliates, representatives, successors and assigns, including their applicable officers, directors, employees and agents in relation to any loss, claim or damage in connection with any Authorised User's access to and use of the Service via the Customer's account or login.
- 4.6 Despite anything else in these Terms of Use, PropertyTree reserves the right to refuse Customers and Authorised Users access to the Service for any reason at PropertyTree's discretion.
- 4.7 Access to the Website and Service may only be available to compatible devices which meet specific system or software requirements specified by PropertyTree or on the Website from time to time. PropertyTree gives no warranty or guarantee that access to or use of the Website or Service will be available to all devices and Customer is solely responsible for ensuring that any device it uses meets system, software or other requirements specified by PropertyTree or on the Website from time to time.
- 5 Use of the Service**
- 5.1 Customer must only use the Service for lawful purposes, for its own internal business purposes and in accordance with these Terms of Use, any directions given by PropertyTree and with all local and foreign laws and regulations.
- 5.2 Customer must not, nor cause or permit a third party to:
- (a) access and/or use the Website or any of the Service in a manner or for a purpose which:
    - (i) is improper, immoral, illegal or fraudulent,
    - (ii) infringes any person's Intellectual Property Rights, or
    - (iii) restricts or interferes with the provision of the Service by PropertyTree to any other customers or users;
  - (b) reverse engineer, reverse assemble, reverse compile or copy or duplicate or modify or make derivative works of or re-sell all or part of the Service (or any of PropertyTree's Intellectual Property Rights in the Service);
  - (c) enter into any transaction relating to access or use of the Service with, or disclose any part of the Website (or Customer's account information or access credentials) and/or Services (or any of PropertyTree's Intellectual Property Rights in the Service) to, a party other than PropertyTree, without the written consent of PropertyTree; or
  - (d) gain, attempt to gain or assist or request any person to gain unauthorised access to the Website, Data and/or Service, computer systems or networks connected to the Service, including through hacking, password mining or any other means.
- 5.3 Customer indemnifies, and will defend and hold harmless, PropertyTree, its affiliates, representatives, successors and assigns, including their applicable officers, directors, employees and agents in relation to any loss, claim or damage in connection with any claim by a third party related to Customer's Data, the disclosure, transfer or exchange of Customer's Data by PropertyTree to or with the provider of any Approved Third Party Application, Customer's content or any of its users' use of the Website and/or Services where such use is not authorised by these Terms of Use.

- 5.4 PropertyTree may vary the scope of the Service, including by adding, removing or changing functionality and features of the Service, at any time and from time to time at its discretion.
- 6 Customer Data**
- 6.1 Customer is responsible for all Data which it provides PropertyTree or inputs into the Service through Customer's account or otherwise provides PropertyTree, including through access to and/or use of the Website or any Approved Third Party Application. Customer is solely responsible for ensuring the integrity, completeness and accuracy of such Data. Customer is also solely responsible for determining the purposes and means of processing such Data, including Personal Information, by PropertyTree under these Terms of Use, and must ensure that processing conducted according to Customer's instructions will not place PropertyTree in breach of any laws (including applicable data protection or privacy laws). Customer must not upload via the Service or Website any Data or materials which infringe any third party's copyright, trade mark, trade secret, confidentiality, privacy or other proprietary or Intellectual Property Rights or which violate any applicable law, statute, ordinance or regulation. Customer agrees to comply with PropertyTree's procedures and policies in respect of uploading Data and materials as may be specified by PropertyTree or on the Website from time to time.
- 6.2 Customer warrants that:
- (a) it has the right to, or has otherwise obtained all licences, consents, authorisations and approvals and made all necessary disclosures necessary to, collect, store, disclose, use, upload, reproduce, permit PropertyTree to reproduce and/or transfer the Data using the Service, including any Personal Information included in the Data;
  - (b) the Data will not violate or infringe upon the rights (including Intellectual Property Rights) of any other person;
  - (c) the Data will not contain a virus or other harmful component; and
  - (d) the Data will comply with any guidelines PropertyTree specifies on the Website.
- 6.3 Solely to enable PropertyTree to provide the Service, Customer grants to PropertyTree, or warrants that it has procured for PropertyTree from the copyright owner or licensor of the Data, a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub-licensable right to do and authorise the doing of all acts comprised in the copyright in all Data.
- 6.4 Customer is responsible for and must adopt reasonable measures to limit its exposure to the potential loss, corruption, disclosure and damage of the Data, including making appropriate arrangements for secure back up or storage of the source material in connection with the Data. PropertyTree expressly excludes liability for any loss of Data no matter how caused.
- 6.5 Customer acknowledges that PropertyTree may not be able to provide all or part of the Service (or such Service in the manner intended) if the Data provided by Customer is not complete, correct or accurate or of a quality or condition suitable for processing based on PropertyTree's applicable standards, specifications and procedures, or is otherwise not in the format required by PropertyTree. Customer acknowledges and agrees that PropertyTree is not responsible for any errors, omissions, losses or damages of any kind resulting directly or indirectly from any inaccuracies in Data provided by the Customer or any failure of the Customer to ensure the integrity, completeness or accuracy of Data before providing it to PropertyTree or inputting it into the Service.
- 6.6 Customer acknowledges that PropertyTree may use the Data and information derived from the Data to produce a compilation of aggregated data and information, which may include similar data and information from other customers of PropertyTree. PropertyTree owns all right, title and interest in and to the aggregated data and information, and may use and commercialise the aggregated data and information at its absolute discretion.
- 6.7 Customer agrees that PropertyTree will not be in breach of its obligations under clauses 16 and 17 when producing a compilation of aggregated data and information. In preparing such aggregated data and information, PropertyTree will use reasonable endeavours to ensure that the Confidential Information or Personal Information disclosed by Customer to PropertyTree cannot be reasonably ascertained from the aggregated data and information.
- 6.8 If Customer accesses or uses (or requests to access or use) an Approved Third Party Application, Customer:
- (a) acknowledges and agrees that it may be subject to separate legally binding terms of use and a separate privacy policy of the provider of the Approved Third Party Application (**Third Party Terms**);
  - (b) warrants that it has read and understood and agrees to comply with all Third Party Terms;
  - (c) consents to PropertyTree disclosing to, transferring to and otherwise exchanging with the provider of the Approved Third Party Application all Data (including Personal Information) as may be required in order to facilitate integration of the Approved Third Party Application with the Service or otherwise as may be required for the Customer and all Authorised Users to use the Approved Third Party Application with the Service; and

- (d) warrants that it has the right to, or has otherwise obtained all licences, consents, authorisations and approvals and made all necessary disclosures (including to its own customers) necessary to permit PropertyTree to disclose to, transfer to and otherwise exchange with the provider of the Approved Third Party Application all Data (including Personal Information) as may be required in order to facilitate integration of the Approved Third Party Application with the Service or otherwise as may be required for the Customer and all Authorised Users to use the Approved Third Party Application with the Service.

### **7 Communication conditions**

- 7.1 If Customer uses any communication tools available through the Website (such as any blog, forum, chat room or message centre), Customer agrees only to use such communication tools for lawful and legitimate purposes. Customer must not use any such communication tool for posting or disseminating any material unrelated to the use of the Service, including (but not limited to):
  - (a) offers of goods or services for sale;
  - (b) unsolicited commercial e-mail;
  - (c) files that may damage any other person's computing devices or software;
  - (d) content that may be offensive to PropertyTree or any other users of the Services or the Website, or material in violation of any law (including material that is protected by copyright or trade secrets which Customer does not have the right to use).
- 7.2 When Customer makes any communication on the Website, Customer represents that it is permitted to make such communication. While PropertyTree may remove any communication at any time in its sole discretion, PropertyTree is under no obligation to ensure that the communications on the Website are legitimate or that they are related only to the use of the Service. As with any other web-based forum, Customer must exercise caution when using the communication tools available on the Website.

### **8 Viruses**

- 8.1 Customer must make its own precautions to ensure that the process which it uses for accessing the Service does not expose it to the risk of viruses, malicious computer code or other forms of interference which may damage Customer's computer system.
- 8.2 PropertyTree does not accept responsibility for any interference or damage to Customer's computer system which arises in connection with Customer's use of the Service.

### **9 Hosting of Data and the Service**

- 9.1 Customer acknowledges that PropertyTree engages a Hosting Service Provider to provide data storage services, to host the Service and to store Data. The Hosting Service Provider may transmit, maintain and store all or parts of the Data (including Personal Information) on multiple servers across various jurisdictions. Servers in which Data (including Personal Information) may be stored by the Hosting Service Provider are likely to be located in Australia, Singapore and Hong Kong, although additional or other locations may be used by the Hosting Service Provider in the future. Acknowledging all of the above, by providing PropertyTree with Data (including Personal Information) or by accessing or using the Service or the Website, Customer: (a) consents to PropertyTree disclosing and transferring Data (including Personal Information) to its Hosting Service Provider for the purpose of allowing the Hosting Service Provider to host all data necessary to support the Service and Website and for PropertyTree to provide the Service to the Customer; (b) consents to PropertyTree and the Hosting Service Provider transmitting, maintaining and storing Data (including Personal Information) between and on servers located outside of New Zealand, including in the regions referred to above. Customer acknowledges and agrees that the transmission of Data (including Personal Information) between PropertyTree and its Hosting Service Provider is necessary for PropertyTree to maintain the Website and provide the Service to Customer. PropertyTree may engage other data storage providers or store Data on servers in other locations in the future and will update these Terms of Use if that is the case.
- 9.2 The Host Server will be located in an environment which has levels of security (including access restrictions) consistent with standards commonly adopted in the application hosting industry to ensure no unauthorised access or use of any part of the Service or Data by any person.

### **10 Service Availability and Support**

- 10.1 While PropertyTree intends to use reasonable endeavours to make the Service and Data available for Customer's use on a 24 hours a day, seven days a week basis, Customer expressly acknowledges and agrees that service continuity is not assured and that the Service and Data are provided on an 'as is' basis. In particular, Customer agrees that on occasions the Service, Data and/or Website may be unavailable or have limited availability including (a) to permit routine or emergency maintenance to take place, (b) to permit upgrades or other development activity to take place, (c) due to technical malfunctions of software, equipment or infrastructure (e.g. telecommunications connectivity, network congestion or delays), (d) due to a Force Majeure event; or (e) due to clause 10.3 applying.

- 10.2 In the case of technical problems which adversely affect Customer's use of the Service, Customer must make all reasonable efforts to investigate and diagnose problems before contacting PropertyTree. If Customer still needs technical help after first attempting to investigate, diagnose and resolve the technical problem or requires any assistance with use of the Service, Customer must notify PropertyTree promptly via the support portal or telephone service provided by PropertyTree for support purposes. Telephone calls and support requests may be made by the Administrator or any Authorised User. PropertyTree may impose reasonable usage limitations on support services from time to time, at its discretion. PropertyTree reserves the right to refuse acceptance of telephone calls and support requests, to refuse to provide support services or to invoice the Customer for certain support services as an Additional Service under clause 11.1, at its discretion, if:
- (a) PropertyTree, acting reasonably, considers that telephone calls or support requests from the Customer are frivolous, exceed reasonable volumes or are in respect of technical problems or other queries already resolved by PropertyTree;
  - (b) telephone calls or support requests relate to subject matter already covered by initial training services or documentation provided by or on behalf of PropertyTree in relation to use of the Service; or
  - (c) the Administrator or any Authorised Users request or require additional training in connection with use of the Service.

10.3 PropertyTree may temporarily limit or suspend the availability of all or part of the Service or the Data if it is necessary for reasons of public safety, security or maintenance of the Service, interoperability of services, data protection or to perform work that is necessary for operational or technical reasons.

10.4 Despite anything else in these Terms of Use, PropertyTree may cancel or suspend Customer's access to the Service or cancel the Service or operation of the Website in their entirety at any time at PropertyTree's discretion.

### 11 Additional Services

11.1 Customer may request PropertyTree to provide Additional Services to Customer. If so, PropertyTree may charge Customer for providing the Additional Services at the prevailing rates charged by PropertyTree for those services, as notified by PropertyTree to Customer.

### 12 Term, Fees and payment

12.1 Customer must pay the Implementation Fee in full at the time of submitting its online registration form for the Service, in accordance with the online registration process for the Service. Customer acknowledges and agrees that the Implementation Fee will not be refunded if Customer terminates this Agreement prior to completion of training or does not utilise or complete all training hours and services offered by PropertyTree. The Implementation Fee will only be refunded if PropertyTree terminates this Agreement prior to commencing implementation and training in respect of the Service.

12.2 Customer agrees to pay PropertyTree the Service Fee monthly in advance commencing from the Start Date, for a minimum term of 12 months (the **Minimum Term**). The obligation to pay the Service Fee in respect of the Minimum Term survives termination. Each monthly instalment of the Service Fee is non-refundable unless otherwise expressly specified in these Terms of Use.

12.3 Payment of fees is to be made by direct debit by charging Customer's credit card, using the credit card details provided by Customer.

12.4 After the Minimum Term, PropertyTree may change the Service Fee at any time by giving Customer thirty (30) days' notice of the change.

### 13 Late or default in payment

13.1 If Customer fails to pay PropertyTree any amount payable under these Terms of Use when due, then:

- (a) all money owing to PropertyTree by Customer becomes immediately payable;
- (b) PropertyTree may suspend access to the Service, and may charge a reactivation fee for suspended Service; and
- (c) Customer must pay all reasonable expenses incurred by PropertyTree in enforcing these Terms of Use, including, but not limited to, all expenses of any legal proceeding and all reasonable attorneys' fees incurred in connection with such action.

### 14 Taxes and GST

14.1 Customer must reimburse PropertyTree for all sales, use, transfer, privilege, excise or other taxes and all duties, whether international, national, state or local, however designated, which are levied or imposed by reason of the transactions contemplated under these Terms of Use, excluding, however, income taxes on profits which may be levied against PropertyTree.

14.2 Without limiting clause 14.1, all consideration provided for any taxable supply under these Terms of Use is exclusive of GST unless the contrary is clear. The amount of that consideration must be increased by an

additional amount equal to the GST on that taxable supply. The party who has to pay the additional amount must pay it at the same time as the consideration in respect of that taxable supply becomes due.

- 14.3 If at any time an adjustment is made or required to be made between a party and the relevant taxing authority on account of any amount paid as GST under these Terms of Use:
- (a) a corresponding adjustment must be made;
  - (b) adjustment notes must be issued; and
  - (c) any payment must be made, between the parties as may be necessary to give effect to the adjustment.

### **15 Intellectual Property**

- 15.1 Except for the limited licence to access and use the Website and Service under clause 3, all ideas, concepts, know-how, data processing techniques, data compilations, Aggregated Data, software, documentation, trade marks, trade secrets, copyright and inventions and other Intellectual Property Rights comprised in or in connection with the Website and the Service (including their underlying technology, software, programs, as well as all their respective modifications, developments, updates and enhancements) are owned by PropertyTree or its licensors. Customer agrees that no transfer of PropertyTree's (or its licensors') Intellectual Property Rights occurs at any time by access or use by Customer (or its users) of the Website or Service.
- 15.2 Customer does not own or use, and must not claim any right or title to own or use, the Intellectual Property Rights in the Website or Service, except to the extent such use is permitted under these Terms of Use. Customer must not dispute or challenge the entitlement of PropertyTree (or its licensors) to own, use or licence the Intellectual Property Rights in the Website or Service (including their underlying technology, software, programs, as well as all their respective modifications, developments, updates and enhancements) or join any third parties to challenge or contest the validity of those Intellectual Property Rights.
- 15.3 Customer agrees to notify PropertyTree promptly of any infringement, or suspected or threatened infringement, of the Intellectual Property Rights in the Website or Service and reasonably co-operate with PropertyTree in relation to such infringement.
- 15.4 Customer agrees to notify PropertyTree promptly of any unauthorised, suspected or threatened third party access to or use of the Aggregated Data, Data, the Website, or Service and to reasonably co-operate with PropertyTree in relation to such unauthorised third party access or use.

### **16 Confidentiality**

- 16.1 Each party must not without the written consent of the other:
- (a) use any Confidential Information of the other party, except in performing its obligations under these Terms of Use; or
  - (b) disclose any Confidential Information of the other party to any person except to its approved employees, officers, directors and other representatives, who need to review the Confidential Information in connection with performance under these Terms of Use, and then only to those who need to know the same and who agree to be bound by similar obligations of confidentiality. Notwithstanding the foregoing, PropertyTree may disclose certain Confidential Information of Customer to PropertyTree's third party suppliers, subject to the obligation of confidentiality, as necessary to (i) provide Customer with the Service or obtain support for such Service, (ii) obtain information specifically requested by Customer, (iii) perform back-office functions or administrative services, or (iv) as necessary to comply with legal and/or accounting requirements.
- 16.2 Clause 16.1 will not impose confidentiality obligations upon the recipient of Confidential Information where:
- (a) disclosure of Confidential Information is required by law or required to respond to requests by a regulatory or judicial body;
  - (b) the Confidential Information is in the public domain through no fault or action of the recipient, its employees or subcontractors; or
  - (c) the Confidential Information was received by the recipient on a non-confidential basis from a third party who is not prohibited from disclosing it.

- 16.3 These obligations of confidentiality survive termination of these Terms of Use.

### **17 Privacy**

- 17.1 Each party must comply with the Privacy Act and any other applicable laws and codes dealing with privacy. Customer acknowledges that it has read and accepts PropertyTree's Privacy Policy published on the Website from time to time.
- 17.2 Customer warrants to PropertyTree that:
- (a) any Personal Information that it discloses to PropertyTree under these Terms of Use, or when using the Service, has been collected in accordance with the Privacy Act;



- (b) the individual to whom the information relates has been made aware of the recipients' identities, of how to contact the recipients, and of the other matters of which the recipients are required to inform that individual; and
  - (c) PropertyTree is authorised to collect, store, disclose and use the Personal Information disclosed to it by Customer for the purposes of these Terms of Use.
- 17.3 Customer acknowledges and agrees that transmissions made by means of the Internet cannot be fully secure in all instances and PropertyTree cannot guarantee that any electronic communication or data transmission made via the Website or Service (including uploading or transmitting any Data or Personal Information) will be secure, uninterrupted or delivered. Customer makes such communications and transmissions and agrees to receive electronic communications from PropertyTree and other users of the Service (as applicable) at Customer's own risk and accepts the risk of interception of such communications, transmissions and Data by third parties and of non-receipt or delayed receipt of such communications, transmissions and Data by PropertyTree and other users of the Service (as applicable).
- 17.4 Customer consents to PropertyTree, its Hosting Service Provider and their related entities and affiliates releasing Personal Information provided by Customer to third parties:
- (a) in order to comply with a valid legal or government requirement such as in compliance with any law, regulation, search warrant, subpoena, court order or government order; and
  - (b) in special cases, when PropertyTree believes it is necessary to share information in order to investigate, prevent or take action regarding any illegal or unauthorised activities, suspected fraud, potential threats to the physical safety of any person or violations of these Terms of Use.

### 18 Force Majeure

- 18.1 Customer acknowledges that making the Website and/or the Service available by PropertyTree for access and use is dependent on a number of factors outside PropertyTree's control, for example, the telecommunication connections and infrastructure.
- 18.2 Except for Customer's payment obligations under these Terms of Use, neither party is liable for any delay or failure to perform any of its obligations under these Terms of Use to the extent that the delay or failure is caused or contributed by a Force Majeure event.

### 19 Warranties

- 19.1 Customer represents and warrants to PropertyTree that:
- (a) it has the power, legal capacity and authority to enter into the registration for use of the Service and be bound by these Terms of Use, and to perform its obligations under these Terms of Use;
  - (b) it has taken all necessary steps, including any corporate action necessary if it is a corporation, to authorise its entry into and performance of all of its obligations under these Terms of Use and to carry out the transactions contemplated by these Terms of Use.

### 20 Disclaimer

- 20.1 PropertyTree has no responsibility to any person other than Customer and nothing in these Terms of Use confers, or purports to confer, a benefit on any person other than Customer. If Customer accesses and uses the Service on behalf of or for the benefit of anyone other than Customer (whether a body corporate or otherwise) Customer must ensure that it has the right to do so.
- 20.2 Customer is responsible for authorising any person who is given access to the Website or the Service using Customer's account and to the Data. Customer agrees that PropertyTree has no obligation to provide any person access to the Website or Service through Customer's account or to the Data without Customer's authorisation. Customer is responsible for ensuring that each person authorised by Customer to access the Website and the Service through Customer's account protects their account identification and password.
- 20.3 Information on the Website may or may not change from time to time. It is not promised or guaranteed to be correct, current, or complete. The Website may contain technical inaccuracies or typographical errors. PropertyTree assumes no responsibility (and expressly disclaims responsibility) for updating the Website to keep information current or to ensure the accuracy or completeness of any posted information. Accordingly, Customer should confirm the accuracy and completeness of all posted information before making any decision or taking any action based on information provided on the Website.
- 20.4 The Website may provide links or references to third party websites or applications (**Linked Sites**) or display material sourced from a third party (**Third Party Material**). PropertyTree is not responsible for and does not endorse the content of Linked Sites or Third Party Material, any use (or misuse) of information Customer may supply to or obtain from a Linked Site or any Third Party Material, or for any goods or services offered via Linked Sites or any Third Party Material. PropertyTree does not warrant or represent the accuracy, utility or any other characteristic of Third Party Material or information or content appearing on any Linked Sites. PropertyTree is not a party to or responsible for any transactions Customer may enter into with third parties, even if Customer learns of such parties (or uses a link to such parties) from the Website.

- 20.5 PropertyTree makes no guarantee, representation or warranty (express or implied):
- (a) that Customer's use of the Website and/or Service will be error-free, secure, uninterrupted or compatible with the Customer's equipment and software configurations or that PropertyTree will be able to prevent third party disruptions or that PropertyTree will correct all defects in the Website and/or Service;
  - (b) that the Website and/or Service will be fit for Customer's or any user's purpose; or
  - (c) that use of the Website and/or Service will improve the financial performance or profitability of Customer or any other party. Customer is responsible for any results obtained from use of the Website and/or Service.
- 20.6 Customer agrees that:
- (a) the provision of, access to, and use of, the Service is on an "as is" basis and at Customer's own risk;
  - (b) among other things, the operation and availability of the systems used for accessing the Service, including telecommunication services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Service. PropertyTree is not in any way responsible for any interference or prevention of Customer's access or use of the Service caused by these types of things;
  - (c) PropertyTree is not Customer's accountant, bookkeeper, real estate agent or property manager and use of the Service does not constitute the receipt of accounting, bookkeeping, real estate or property management advice. If Customer has any accounting, bookkeeping, real estate or property management questions, it should contact an appropriately qualified accountant, bookkeeper or real estate agent.
  - (d) it is Customer's sole responsibility to determine that the Service meets the Customer's needs and is suitable for the purposes for which it is used; and
  - (e) Customer remains solely responsible for complying with all applicable accounting, tax and other laws in connection with its access and use of the Service

### **21 Limitation of liability**

- 21.1 Nothing in these Terms of Use is or should be interpreted as an attempt to modify, limit or exclude terms, warranties or guarantees which are imposed by statute and which cannot be modified, limited or excluded.
- 21.2 PropertyTree excludes to the extent permitted by law all other terms, conditions, warranties and guarantees which might be implied into these Terms of Use.
- 21.3 The Customer does not rely on any representation, warranty, guarantee or other provision made by PropertyTree or on its behalf which is not expressly stated in these Terms of Use.
- 21.4 Subject to clauses 21.1, 21.5, 21.6 and 21.7, the aggregate liability of PropertyTree to Customer for all claims relating to or arising out of the Website, the Services and/or these Terms of Use, whether such claims are based on a breach of or omission under these Terms of Use or under contract, for negligence or other tort, for breach of statutory duty, for breach of warranty or in equity or otherwise will not exceed the total Service Fees paid by Customer to PropertyTree for the Service during the 6 month period immediately preceding the first event which gives rise to a claim. There will be only one aggregate liability cap under these Terms of Use even if there are multiple claims and each claim will reduce the amount available in the aggregate liability cap.
- 21.5 Subject to clause 21.1, if PropertyTree is liable to Customer for a breach of a term, condition, warranty or guarantee implied into these Terms of Use by statute, that liability is limited to the supplying of the Service again or the payment of the cost of having the Service supplied again.
- 21.6 Without limiting Customer's obligations to pay the Service Fee, neither party is liable to the other party for any indirect, incidental, special, punitive or consequential loss or damage, economic loss, loss of revenue, loss of business, loss of saving on overheads, loss arising from business interruption, loss of goodwill or loss of profits, loss of data or data use or loss of use of the Website and/or the Services or the inability to use the Services and/or Website even if it has been advised of the possibility of such damages or loss.
- 21.7 The liability of a party for loss or damage sustained by the other party will be reduced proportionately to the extent that:
- (a) such loss or damage has been caused by the other party's failure to comply with its obligations and responsibilities under the Terms of Use; or
  - (b) the negligence of the other party has contributed to such loss or damage, regardless of whether a claim is made by the other party.

### **22 Suspension**

- 22.1 PropertyTree may without notice suspend Customer's access to the Service if:

- (a) the Customer breaches these Terms of Use; or
  - (b) PropertyTree reasonably believes that Customer's access and use of the Service will cause technical incapacity to the Service which will continue unless access or use is suspended.
- 22.2 Customer may not object to any delay in restoring access to the Service when a suspension is lifted. PropertyTree will act promptly to restore access when it is satisfied that the reason for suspension has been removed.

### 23 Termination

- 23.1 In addition and without prejudice to any other rights or remedies, these Terms of Use may be terminated as follows:
- (a) by either party giving the other party 30 days written notice of termination; or
  - (b) immediately by either party upon giving written notice to the other party, if the other party ceases to operate in the ordinary course of business, makes an assignment for the benefit of creditors or similar disposition of its assets or becomes or threatens to become subject to any form of insolvency administration, bankruptcy, liquidation, dissolution or similar proceeding;
  - (c) immediately by PropertyTree upon giving written notice to the Customer, if PropertyTree's relationship with its Hosting Service Provider or any other third party supplier that provides software, hosting services or other technology, products or services relied on by PropertyTree to provide the Service expires or terminates or such provider requires PropertyTree to change the way it provides the Service or Website. In this event Property Tree will give Customer a pro rata refund of any fees paid which relate to a period after the date of termination.
- 23.2 These Terms of Use remain in full force and effect during the 30 day notice period in the case of termination under clause 23.1(a). In the case of termination under clause 23.1(a), Customer acknowledges that:
- (a) it must continue to comply with its obligations to pay the Service Fee during the 30 day notice period;
  - (b) it must pay the monthly instalment of the Service Fee in full if payment falls due during the 30 day notice period; and
  - (c) no refund (either in total or on a pro rata basis) applies in respect of any payment of the Service Fee made during the 30 day notice period regardless of the date of termination.

### 24 Effect of termination

- 24.1 Termination does not affect any accrued rights or liabilities of either party nor does it affect any provision which is expressly or by implication intended to operate after termination.
- 24.2 On termination of these Terms of Use or cancellation of the Service or Website for any reason:
- (a) PropertyTree will immediately cease providing the Service to Customer and will deny Customer access to the Service and Customer Data;
  - (b) Customer's rights under these Terms of Use immediately cease and Customer must immediately stop accessing and using the Service;
  - (c) subject to any legal requirements or other obligations to retain Data under these Terms of Use, PropertyTree may delete all Customer Data but may retain and use, at PropertyTree's discretion, Customer Data that is not Personal Information; and
  - (d) Customer must immediately pay any and all outstanding invoices or any charges or fees incurred as a result of its access and use of the Service. For the avoidance of doubt, if Customer terminates this Agreement for any reason before expiry of the Minimum Term then Customer must immediately pay to PropertyTree on termination the balance of the Service Fee relating to the remaining period of the Minimum Term.
- 24.3 Customer acknowledges and agrees that it will be denied access to Customer Data and that PropertyTree may delete Customer Data on termination of these Terms of Use as set out in clause 24.2. Customer is solely responsible for downloading and maintaining a copy of all Customer Data prior to the date of termination if it wishes to ensure availability of Customer Data after termination. Customer indemnifies, and will defend and hold harmless, PropertyTree, its affiliates, representatives, successors and assigns, including their applicable officers, directors, employees and agents in relation to any loss, claim or damage in connection with denial of access to or deletion of Customer Data in accordance with this clause 24.

### 25 Assignment and subcontracts

- 25.1 These Terms of Use may not be assigned, sublicensed or otherwise transferred by Customer, whether by operation of law or otherwise, without PropertyTree's prior written consent, such consent not to be unreasonably withheld or delayed.

- 25.2 PropertyTree may, at any time, novate, assign or transfer part or all of its rights and obligations under these Terms of Use to any third party and to the extent required Customer consents to the novation, assignment or transfer. Customer agrees to enter into a novation, assignment or transfer agreement on terms specified by PropertyTree.
- 25.3 PropertyTree may subcontract some or all of its obligations under these Terms of Use to one or more third-parties, however, PropertyTree will remain responsible for compliance with all of its obligations and is responsible for compliance of these Terms of Use by each third party subcontractor as if that third party was a party to these Terms of Use.

### **26 Notices**

- 26.1 Notices given under these Terms of Use must be in writing and delivered to a party by hand or by email to that party's address shown below or to an alternate address notified to the party giving the notice. Customer's address for delivery of a notice is the address notified to PropertyTree when the Customer registers to use the Service. PropertyTree's address for delivery of a notice is:

Attention: **Financial Controller**

PropertyTree Pty Limited  
Level 6, 29-57 Christie Street  
St Leonards NSW 2065  
AUSTRALIA

Email: [accounts@rockend.com.au](mailto:accounts@rockend.com.au)

- 26.2 A notice is taken to be duly given and received:
- (a) if delivered by hand, when delivered; or
  - (b) if delivered by email, when the sender receives an automatic receipt confirming delivery of the email or the recipient party confirms, by non-automated email, receipt of the notice.

### **27 Variation**

- 27.1 These Terms of Use may be varied by PropertyTree from time to time by publishing the varied Terms of Use on the Website. Customer accepts that by PropertyTree doing this, PropertyTree has provided Customer with sufficient notice of the variation.

### **28 General**

- 28.1 These Terms of Use constitute the entire understanding between the parties and supersedes all previous and contemporaneous communications, representations, or agreements with respect to Customer's access and use of the Service.
- 28.2 No failure or delay of either party in exercising any right, power, or privilege under these Terms of Use (and no course of dealing between the parties) operates as a waiver of any such right, power or privilege. No waiver of any default on any one occasion constitutes a waiver of any subsequent default. No single or partial exercise of any right, power, or privilege precludes the further or full exercise of such right, power or privilege.
- 28.3 If any provision of these Terms of Use is held to be unenforceable, the parties agree to substitute the affected provision with an enforceable provision that approximates the intent and economic effect of the affected provision.
- 28.4 If any one or more of the provisions of these Terms of Use are for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction or a panel of arbitrators, the remaining provisions of these Terms of Use will be unimpaired and will remain in full force and effect.
- 28.5 Each party must do everything reasonably required by the other to give full effect to these Terms of Use.
- 28.6 These Terms of Use and all matters regarding the interpretation and/or enforcement of these Terms of Use, are governed exclusively by the laws in force in the State of New South Wales, Australia and the parties submit to the exclusive jurisdiction of the courts of New South Wales.