

1.0 DATA LINKER TERMS OF USE (“TERMS”)

- 1.1 These Terms are binding on any use of the Service and apply to You from the time that We provide You with access to the Service.
- 1.2 We reserve the right to change these Terms and the Technical Specification at any time. Any changes will be posted on the Website. It is likely these Terms and the Technical Specification will change over time. It is Your obligation to ensure that You have read, understood and agreed to the most recent Terms and Technical Specification.
- 1.3 Any changes to these Terms will be notified to the email address that you provide us with on registration, and will be effective 10 working days after posting on the Website.
- 1.4 Changes to the Data Linker Subscription will be effective from Your next annual subscription date and will not affect an existing subscription that has been paid in advance.
- 1.5 By registering to use the Service You acknowledge that You have read and understood these Terms and the Technical Specification.

2.0 DEFINITIONS

- 2.1 In these Terms, unless the context otherwise requires:

“Consumer” means any Member who receives or is entitled to receive Data from another Member under a Licence Agreement.

“Data” means data or information falling within a particular Data Schema held by a Member which is provided to another Member pursuant to a Licence Agreement.

“Data Fields” means the fields of data contained within a Data Schema.

"Data Linker Subscription " means the annual subscription (excluding any taxes and duties) payable by You in accordance with the subscription schedule set out on the Website from time to time.

“Data Schema” means the type and format of specified data sets and the means for requesting and delivering that data pursuant to a Licence Agreement and made available on the Website.

"Intellectual Property Rights" means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

“Licence Agreement” means the electronically constructed legal contract entered into via the Service and the Website detailing the terms and conditions under which Data will or may be provided by one Member to another Member.

“Mandatory Fields” means the Data Fields which are identified as being mandatory in a Data Schema.

"Member" means a person who has applied for and been accepted by Us as a registered user of the Service in accordance with these Terms but does not include a person whose Membership has been terminated.

"Primary Producer" means the person from whom a Provider has received any required authority to disclose the Data to the Consumer.

"Provider" means any Member who provides or is obliged to provide Data to another Member under a Licence Agreement.

"Service" means the facilitation services made available by us from time to time via the Website and as more particularly described in clause 3.

"Technical Specification" means the technical requirements and protocols that must be implemented by members of the DataLinker Service in relation to the disclosure of Data as published on the Website from time to time.

"We, Us and Our" are a reference to Data Linker Limited and includes Our agents, employees and contractors.

"Website" means the website site at www.datalinker.org.nz.

"You and Your" means the Member.

3.0 THE SERVICE

3.1 The Service is intended to assist business and industry organisations in the primary sector to exchange data.

3.2 The Service provides:

- (a) a venue to allow Members to connect and enter into Licence Agreements; and
- (b) a set of authentication protocols prescribing the process by which a Primary Producer's permission to share Data from one Member to another Member is obtained; and
- (c) a set of protocols prescribing the process by which Members will provide Data to other Members pursuant to a Licence Agreement.

3.3 You agree and acknowledge that:

- (a) The Service is an online platform to facilitate the sharing of Data amongst Members;
- (b) We do not store or provide any Data;
- (c) Data transfers directly from a Provider to a Consumer and that no Data transfers through the Website;
- (d) We do not act as agent for either party to a Licence Agreement and are not a party to or bound by any Licence Agreement;
- (e) A Member's registration does not constitute a recommendation or endorsement of that Member by Us;

- (f) Without limiting clause 10, We give no undertaking, representations or warranties in respect of the Data provided by a Member or whether a Member has the right to disclose Data in accordance with a Licence Agreement.
- (g) Although the Service is intended to facilitate Members to connect and enter into Licence Agreements, no Member shall be required to enter into a Licence Agreement with another Member, even if the Members are in agreement as to the terms of that Licence Agreement.

4.0 MEMBERSHIP

- 4.1 In order to use the Website, You must first register as a Member.
- 4.2 To register as a Member, You must complete the registration process as set out on the Website.
- 4.3 A Member must be an incorporated legal entity and which stores or uses data related to Primary Producers.
- 4.4 We reserve the right to refuse registration for any reason.
- 4.5 You warrant that You have provided complete, accurate and current personal and business information when registering as a Member.
- 4.6 You must maintain and update Your personal and business information held by Us to ensure that it is kept current at all times.
- 4.7 We may contact You to verify Your details.
- 4.8 You acknowledge that for the purposes of these Terms, You may in any given situation be a Provider or a Consumer.

5.0 USE OF SERVICE

- 5.1 We grant You the right to access and use the Service via the Website. This right is non-exclusive, non-transferable, and limited by and subject to these Terms.
- 5.2 Subject to these Terms, We will provide the Service with reasonable care and skill.
- 5.3 Without prejudice to Our other rights and remedies, You agree that We may limit or suspend Your access to or use of the Service or the Website for as long as We think fit where You have breached these Terms.
- 5.4 You acknowledge that from time to time the Service and the Website may be temporarily unavailable while scheduled maintenance and similar work is carried out by Us.

6.0 YOUR OBLIGATIONS

- 6.1 An invoice for the Data Linker Subscription, as advertised on the Website will be issued upon You commencing use of the Service for the period from and including that date and ending after one year. We will then invoice You annually in advance.

- 6.2 All invoices will be sent to You by email. You must pay each invoice on the due date specified in the invoice.
- 6.3 You are responsible for payment of all taxes and duties in addition to the Data Linker Subscription.
- 6.4 You must only use the Service and Website for Your own lawful internal business purposes and in accordance with these Terms.
- 6.5 You must act in good faith in Your dealings with other Members whether pursuant to a Licence Agreement or otherwise.
- 6.6 You must ensure that all usernames and passwords required to access the Service are kept secure and confidential. You must immediately notify Us of any unauthorised use of Your passwords or any other breach of security and We will reset Your password and You must take all other actions that We reasonably deem necessary to maintain or enhance the security of Our computing systems and networks and Your access to the Service.
- 6.7 When accessing and using the Service, You must:
- (a) not use, or misuse, the Service in any way which may impair the functionality of the Service or the Website, or other systems used to deliver the Service or impair the ability of any other person to use the Service or Website;
 - (b) not attempt to gain unauthorised access to any materials other than those to which You have been given express permission to access or to the computer system on which the Service is hosted;
 - (c) not transmit, or input into the Website, any files that may damage Our or any other person's computing devices or software, content that may be offensive, or material or data in violation of any law (including data or other material protected by copyright or trade secrets which You do not have the right to use); and
 - (d) not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Service or to operate the Website.
- 6.8 You agree to comply with Your obligations to the Primary Producer in respect of:
- (a) the storage and use of Data which You receive from another Member; and
 - (b) the provision of Data to another Member.
- 6.9 Where You are a Provider, You must keep full and complete records of the following information:
- (a) Number of requests from Consumers by Data Schema for the provision of Data.

- (b) Number of permissions for the provision of Data to a Consumer received from a Primary Producer.

You must provide this information to Us in an anonymised form and in accordance with Our reasonable requirements within 10 working days of Our requesting it. We will not request this information from You more than once every 3 months, and undertake to only provide aggregated results in Our reporting to third parties who fund Our operations and in our disclosures to third parties connected with one or more primary industries.

6.10 As a Provider, You agree to:

- (a) Implement at Your cost the capability in Your computer networks and systems to interact with the Service and the Website, Consumers and Primary Producers, log DataLinker related activity and implement any other capability in accordance with Our protocols and requirements as detailed in the Technical Specification;
- (b) Ensure that all Mandatory Fields can be delivered in the format prescribed by the Data Schema;
- (c) Comply with Your obligations as a Provider under a Licence Agreement.

6.11 As a Consumer, You agree to:

- (a) Implement at Your cost the capability in Your computer networks and systems to interact with the Service and the Website, Providers and Primary Producers, log DataLinker related activity and implement any other capability in accordance with Our protocols and requirements as detailed in the Technical Specification;
- (b) Comply with Your obligations as a Consumer under a Licence Agreement.

7.0 PRIVACY

7.1 Privacy:

- (a) This clause sets out generally how We may gather, use, disclose and manage personal information.
- (b) You are entitled to access the personal information We hold about You, and request that We amend it if it is incorrect.
- (c) During the course of dealing with You, We and Our contractors may generally collect basic personal information about You, such as Your name, address and contact details. We may also request other specific information from You relating to the Service.
- (d) We will hold and use any personal information collected for the purposes set out in this clause, for any purpose disclosed at the time of collection, or for related purposes. Generally, We will only use or disclose Your personal information as follows:

- (i) To third parties or contractors where We have retained those third parties to assist in the provision of the Service;
 - (ii) For purposes of advising You of products or services integrated to or related to the Service; or
 - (iii) Where otherwise legally permitted.
- (e) By providing Us with Your email address You consent to receiving emails from Us advising of updates.

8.0 INTELLECTUAL PROPERTY

- 8.1 Title to, and all Intellectual Property Rights in the Service, the Website and any documentation relating to the Service including, without limitation, the Data Schema, text, graphics, logos, icons and sound recordings and the software and other material underlying them are and remain Our property.
- 8.2 Title to, and Intellectual Property Rights in, the Data will be governed by the Licence Agreement associated with the disclosure of that Data.
- 8.3 You are responsible for any data You input into the Service, and must maintain Your own backup copies if You require backups. We do not make any guarantee that there will be no loss of data. We expressly exclude liability for any loss of data no matter how caused.

9.0 YOUR ACKNOWLEDGEMENTS AND WARRANTIES

- 9.1 You acknowledge that:
- (a) The provision of, access to, and use of, the Service and the Website is on an "as is" basis and at Your own risk.
 - (b) We do not warrant that the use of the Service or the Website will be uninterrupted, timely, secure or error free. Among other things, the operation and availability of the systems and networks used for accessing the Service can be unpredictable and may from time to time interfere with or prevent access to the Service. We are not in any way responsible for any such interference or prevention of Your access to or use of the Service.
 - (c) It is Your sole responsibility to determine that the Service meets Your needs and/or the needs of Your business and are suitable for the purposes for which they are used.
 - (d) You remain solely responsible for complying with all applicable laws.
- 9.2 We give no warranty about the Service. Without limiting the foregoing, We do not warrant that the Service will meet Your requirements or that it will be suitable for any particular purpose. All implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.
- 9.3 You warrant and represent that You are acquiring the right to access and use the Service for the purposes of a business and that, to the maximum extent

permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers (including, without limitation, the Consumer Guarantees Act 1993) does not apply to the supply of the Service, the Website or these Terms.

- 9.4 You acknowledge that:
- (a) the provision of Data to You by another Member is subject to the applicable Licence Agreement; and
 - (b) the provision of Data by a Provider may not be continuous, uninterrupted, complete, accurate or error or virus free.

10.0 LIMITATION OF LIABILITY AND INDEMNITY

10.1 We give no warranty and make no representation about and do not accept any responsibility for:

- (a) the accuracy, completeness or reliability of any Data which You may receive from another Member whether pursuant to a Licence Agreement or otherwise; or
- (b) the performance or non-performance by a Member with any Licence Agreement to which You are or have been a party with that Member.

10.2 To the maximum extent permitted by law, We exclude all liability and responsibility to You (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of information, data, profits and savings) or damage resulting, directly or indirectly, from any use of, or reliance on, the Service or Website or any Data provided to You. You and Us contract out of sections 9, 12A, 13, and 14(1) of the Fair Trading Act 1986.

10.3 You indemnify us against any claims made by a third party (whether another Member or not) and for any loss, damage, or costs suffered or incurred by Us arising directly or indirectly from Your use of the Service or the Website or the provision or non-provision of Data by You to another person or any breach by You of these Terms or a Licence Agreement. . The indemnity in this clause 10.3 does not apply to a claim made against Us by a third party for breach of that third party's intellectual property rights.

10.4 If You suffer loss or damage as a result of Our negligence or failure to comply with these Terms or otherwise, any claim able to be brought by You against Us arising from Our negligence or failure will be limited in respect of any one incident, or series of connected incidents, to an amount equal to the latest Data Linker Subscription paid by You.

10.5 If You are not satisfied with the Service, Your sole and exclusive remedy is to terminate these Terms in accordance with clause 11.

11.0 TERMINATION

11.1 We reserve the right to terminate Your Membership and these Terms at Our sole discretion. We may terminate Your membership for any reason, including but not limited to:

- (a) receipt of serious or multiple complaints regarding You from other Members;
 - (b) where We consider that You are attempting to avoid making payments due to Us;
 - (c) any breach by You of these Terms;
 - (d) where We consider Your behaviour in any connection with the Website or other Members to be unacceptable; or
 - (e) where We consider You have become insolvent.
 - (f) Where You have notified Us You no longer wish to use the Service.
- 11.2 If We terminate Your Membership other than for Our convenience, We will not provide You with any refund for any remaining prepaid period for a Data Linker Subscription. Where We have terminated Your Membership for Our convenience, We will refund You the unexpired portion (calculated on a daily basis) of the Data Linker Subscription for the subscription period in which termination has occurred provided that such Data Linker Subscription has been paid by You.
- 11.3 If these Terms or Your Membership terminates You shall be liable to pay all relevant unpaid Data Linker Subscriptions on a pro-rata basis for each day of the then current subscription period up to and including the day of termination of these Terms.
- 11.4 Termination of these Terms is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination, You will:
- (a) remain liable for any accrued charges and amounts which become due for payment before or after termination; and
 - (b) immediately cease to use the Service and the Website.
- 11.5 Clauses 8, 9, 10 and 11 survive the expiry or termination of these Terms.
- 11.6 If You no longer wish to use the Service as a means by which You will agree to provide or receive Data from other Members, then You must notify us of this immediately. We or You may then terminate Your Membership which will be effective immediately. However, You acknowledge You will still be entitled to the benefit of, and be bound by, any Licence Agreement to which You are a party at the time of termination of Your membership in accordance with, and subject to, the terms of that Licence Agreement.
- 11.7 Where You have agreed to provide Data to another Member and that other Member terminates their Membership or has their Membership terminated then You will continue to be obliged to provide Data to that other Member subject to, and in accordance with, the applicable Licence Agreement.

12.0 HELP DESK

- 12.1 In the case of technical problems, You must make all reasonable efforts to investigate and diagnose problems before contacting Us. If You still need technical help, please check the support provided on the Website or failing that email us at info@datalinker.org.nz and We will endeavour to respond as soon as reasonably practicable during normal business hours.

13.0 GENERAL

- 13.1 These Terms supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between You and Us relating to the Service and the other matters dealt with in these Terms.
- 13.2 If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.
- 13.3 Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.
- 13.4 You may not assign or transfer any rights or Your Membership to any other person without Our prior written consent.
- 13.5 You accept these Terms are governed by New Zealand law and You submit to the exclusive jurisdiction of the courts of New Zealand for all disputes arising out of or in connection with this Agreement.
- 13.6 If any part or provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of these Terms will be binding on You and Us.
- 13.7 Any notice given under these Terms must be in writing by email and will be deemed to have been given on transmission. Notices to Us must be sent to info@DataLinker.org.nz or to any other email address notified by email to You by Us. Notices to You will be sent to the email address which You provided when registering as a Member.
- 13.8 A person (other than Our agents, employees and contractors) who is not a party to these Terms has no right to benefit under or to enforce any term of these Terms. You acknowledge that Our agents, employees and contractors will be entitled to the benefit of and to enforce clauses 9 and 10 of these Terms.

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