



Location Information (LI) Subscription Licence

Version: **010117**

Agreement number: **TBA**

Between

Western Australia Land Information Authority (Landgate)

And

Customer Name (Licensee)

Prepared by: Commercial Insights, Landgate

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SAMPLE

PARTIES

This Agreement is made on the date shown in **Item 1** between Landgate and the Licensee as specified in **Item 2**.

BACKGROUND

- A. Landgate is the owner of the Intellectual Property in the Location Information Product.
- B. Landgate has agreed to grant a licence for the use of the Location Information Product on the terms and conditions contained in this Agreement.

AGREED TERMS

1 Grant of Licence

Landgate grants to the Licensee a non-exclusive and non-transferable licence to use the Location Information Product for the Approved Purpose only during the Term on the terms and conditions of this Agreement.

2 Fees and Charges

- 2.1 The Licensee must pay Landgate the fees and charges specified in **Item 10** annually, subject to any annual increase in line with **clause 3**.
- 2.2 All taxes, duties and charges arising out of or incidental to this Agreement will be the responsibility of and payable by the Licensee.
- 2.3 All payments to be made by the Licensee are calculated without regard to GST, unless stated otherwise. The Licensee must pay Landgate (at the same time and in the same manner as the Licensee is obliged to pay for the supply) the amount of any GST which Landgate pays or is liable to pay on a supply (as that term is defined in the GST Act), in addition to the consideration payable for that supply.
- 2.4 Where GST is payable, Landgate will provide to the Licensee, if required by the Licensee, a Tax Invoice in the format and form required by the GST Act.

3 Review of Fees and Charges

- 3.1 Landgate may vary any of the fees and charges specified in this Agreement.
- 3.2 All fees and charges will:
 - (a) be reviewed and increased on the relevant CPI Review Date;
 - (b) be increased by a factor equal to the percentage of the annual CPI in the 12 month period to September of the previous year, determined by Landgate as part of its annual review of fees and charges generally; and
 - (c) not be less than the fees and charges payable immediately prior to the relevant CPI Review Date.
- 3.3 Landgate will use its best endeavours to provide at least 30 days' notice of any variation to the fees and charges.
- 3.4 For fees and charges paid in advance, any increase that applies in respect of part of that period will be specified in the Tax Invoice next issued by Landgate.

4 Intellectual Property Rights

- 4.1 The Licensee only acquires the right to use the Location Information Product in accordance with this Agreement and during the Term. The Licensee does not acquire any rights of ownership in the Location Information Product.
- 4.2 Intellectual Property Rights over and in respect of the Location Information Product will at all times remain with Landgate unless otherwise identified (eg third party computer program copyright owner).
- 4.3 Landgate retains the right to licence, distribute, market, sell and provide the Location Information Product to any other person on such terms and conditions as Landgate deems fit.
- 4.4 Unless otherwise specified, Landgate represents and warrants to the Licensee that Landgate holds all Intellectual Property Rights necessary to grant this licence and any rights contained within this Agreement.
- 4.5 The Licensee must promptly report to Landgate any known or suspected infringement of Landgate's Intellectual Property Rights over or in respect of the Location Information Product.
- 4.6 The Licensee must ensure that all reproductions and adaptations of the Location Information Product, however altered, reformatted or redisplayed, shall display the following proprietary notice:

'© Landgate (201__)'

5 Alteration of the Location Information Product

- 5.1 Landgate reserves the right to alter, correct or amend the nature and content of the Location Information Product from time to time and will endeavour to notify the Licensee prior to any alteration or amendment being made.
- 5.2 Any alteration or amendment will form part of the Location Information Product immediately on provision.

6 Licensee Obligations

The Licensee must:

- (a) at its own cost, comply with all regulations, restrictions and conditions imposed by any legislation with respect to the use of, access to, storage of or dealing with the Location Information Product including but not limited to privacy legislation;
- (b) not itself, or permit any other person to distribute, sell, transmit, licence, hire, let, trade or expose for sale any Location Information Product, or part thereof, unless expressly authorised in writing by Landgate or in accordance with this Agreement;
- (c) act in good faith at all times towards Landgate and provide assistance and co-operation as practicable, on request by Landgate;
- (d) comply with all State and Commonwealth laws relevant to this Agreement;
- (e) use its best endeavours to ensure that none of its employees, Consultants or clients cause the Licensee to breach this Agreement;
- (f) notify Landgate within 14 days if any of the Licensees details in **Item 2** change;
- (g) ensure that no alteration is made to the integrity or accuracy of any Location Information Product;
- (h) ensure that any notices relating to Intellectual Property Rights appearing in or on the Location Information Product or literature relating to them, are not altered or removed;
- (i) provide all reasonable assistance in any action taken or proposed to be taken by Landgate in enforcing its rights under this Agreement;
- (j) promptly advise Landgate in writing of any actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, charges and expenses which may be brought,

claimed or threatened against the Licensee or Landgate in respect of or relating to this Agreement or any Location Information Product; and

- (k) notify Landgate of and provide all information in its possession or under its control in respect of any infringement of Landgate's Intellectual Property Rights.

7 Register and Audit

The Licensee must:

- (a) keep a register from the Commencement Date and for a 5 year period after termination of this Agreement containing the details specified in **Item 13**,
- (b) provide the register to Landgate for inspection and audit within 7 days, if requested by Landgate; and
- (c) vary the contents of the Register if reasonably required by Landgate, within 30 days of written notice.

8 Audit and inspection

- 8.1 Subject to the provision of 14 days written notice, Landgate, or any person authorised by Landgate, may:
 - (a) require the Licensee to provide reasonable information or assistance to determine the Licensee's compliance with this Agreement;
 - (b) require the Licensee to provide Landgate access, free of charge, to any portals or systems utilising the Location Information Product for the sole purpose of ensuring compliance by the Licensee with this Agreement; and
 - (c) audit the Licensee in accordance with the auditing standards stipulated by Landgate, including by entering the Licensee's premises during standard business hours, inspecting any facilities, records, accounts, systems, hardware and software for the sole purpose of verifying compliance with this Agreement.
- 8.2 If an audit or inspection reveals the Licensee is not compliant with this Agreement, including that the use of the Location Information Product is not compliant, Landgate may take action in accordance with **clause 18** and require the Licensee to remedy the lack of compliance, including by paying or repaying Landgate any additional fees that would have been recovered and interest thereon.

9 Security

The Licensee must:

- (a) effect and maintain adequate security measures to ensure that any Location Information Product is not used or accessed by any third party who is not permitted by this Agreement to use or have access to the same, to Landgate's reasonable satisfaction;
- (b) take all reasonable steps that a prudent licensee in a similar situation would take to prevent unauthorised access, unauthorised downloading, damage and interference to the Location Information Product or Licensees system;
- (c) ensure that the Location Information Product is kept in a secure manner to protect its value and prevent the Location Information Product from being accessed, altered or released without permission;
- (d) immediately notify Landgate of any activity that may or does breach the security measures of this clause;
- (e) ensure that its employees, agents and Consultants are made personally aware of and agree to comply with the security obligations contained in this Agreement, before providing them with access to any Location Information Product; and

- (f) permit Landgate to periodically test security of the Location Information Product and the Licensee's system to ensure compliance with this clause to Landgate's reasonable satisfaction.

10 Insurance

- 10.1 The Licensee must effect and maintain, at its sole expense, valid and enforceable insurance with a reputable and solvent Australian Prudential Regulation Authority approved insurer carrying on business in Australia for the Term covering:
 - (a) product and public liability insurance for the minimum amount per claim specified in **Item 12.3(a)**; and
 - (b) professional indemnity insurance for the minimum amount per claim specified in **Item 12.3(b)**.
- 10.2 On request by Landgate, the Licensee must verify that the Licensee has the insurance required under this Agreement by providing a certificate of currency.
- 10.3 Any insurance policy must be in a form that does not allow the insurer to exercise rights of subrogation against Landgate.
- 10.4 The Licensee must notify Landgate immediately of any cancellation or non-renewal of any insurance policies in connection with this Agreement.
- 10.5 Where Landgate reasonably considers that additional insurance or increased limits to existing insurance may be necessary, the Licensee must obtain such additional insurance or increase its limits as required.

11 Privacy

- 11.1 In respect of the Location Information Product, the Licensee agrees to:
 - (a) comply with the requirements of any privacy legislation, particularly in relation to its handling of personal information, as defined in the same, including the collection, use, disclosure and security of such information; and
 - (b) comply with any reasonable direction relating to privacy given by Landgate, including those relating to Landgate's own privacy policies and procedures.
- 11.2 The Licensee must not use any Location Information Product for the purpose of Direct Marketing; nor release the Location Information Product to any third party where that party proposes to use the Location Information Product for the purpose of Direct Marketing.
- 11.3 The Licensee will provide any assistance requested by Landgate in relation to an investigation of an allegation of misuse of any Location Information Product or contravention of privacy legislation.
- 11.4 This clause will survive termination of this Agreement.

12 Confidentiality

- 12.1 The parties must not disclose Confidential Information except in the circumstances of this clause.
- 12.2 Neither party may use or make available in any form to any third party the other party's Confidential Information, unless in accordance with this Agreement.
- 12.3 Each party must hold the other party's Confidential Information secure and in confidence, except for such Confidential Information which the disclosing party can demonstrate:
 - (a) is required to be disclosed according to the requirements of any law, stock exchange, judicial body or government agency or any other regulatory body;
 - (b) is or has generally become available to the public without breach of this Agreement;
 - (c) was approved for release in writing by the other party, but only to the extent of and subject to such conditions as may be imposed in such written authorisation; and

- (d) is required to be disclosed to a Western Australian government Minister, the Western Australian Parliament or any committee or sub-committee of the Western Australian Parliament.

12.4 This clause will survive termination of this Agreement.

13 Suppression of Information

- 13.1 Landgate may at any time give the Licensee an Information Suppression Notice.
- 13.2 An Information Suppression Notice must be in writing, advise of the information that must be suppressed and the Location Information Product to be deleted or amended.
- 13.3 If the Licensee is able to search the Licensee's system by a person's name, then within 5 Business Days of receiving an Information Suppression Notice, the Licensee must delete or amend any Location Information Products containing the suppressed information, which are in the Licensee's possession or under its control, including any Location Information Products stored for backup purposes.

14 Acknowledgement and Out of Scope

- 14.1 The Licensee acknowledges that:
 - (a) it uses the Location Information Product at its own risk;
 - (b) risk (but not title) in the Location Information Product delivered to the Licensee, and in the media or software on which it is delivered and stored, passes to the Licensee on delivery;
 - (c) the Location Information Product is provided by Landgate in good faith on an "as is" basis and the Licensee should not act on the basis of anything contained in the Location Information Product without first obtaining specific professional advice;
 - (d) the Location Information Product has been acquired and/or compiled from various data sources and is recorded and stored at different levels of reliability and may become erroneous over time; and
 - (e) it is fully responsible for obtaining, and the consequence of use of any hardware, computer program, system or any other thing necessary to make use of the Location Information Product.
- 14.2 Landgate does not represent or warrant to the Licensee that:
 - (a) the Location Information Product is error free or virus free;
 - (b) the supply of the Location Information Product will be uninterrupted;
 - (c) the Location Information Product will provide any function not designated in any Location Information Product definition;
 - (d) the Location Information Product will be capable of being processed on any equipment or system of the Licensee; and
 - (e) it will provide any training in the use of the Location Information Product.

15 Australian Consumer Law

- 15.1 To the fullest extent permitted by law, and except where consumer guarantees imposed by Division 1 of Part 3-2 of the Australian Consumer Law are applicable, no warranty, condition, undertaking or term (whether express or implied) as to the condition, quality, reliability, accuracy or completeness, performance, merchantability or fitness for purpose of the Location Information Product is given or assumed by Landgate.
- 15.2 Pursuant to section 64A of the Australian Consumer Law, this **clause 15.2** applies in respect of any of the goods or services supplied under this Agreement which are not of a kind ordinarily acquired for personal, domestic or household use or consumption. To the extent permitted by law, Landgate's

liability for failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the Australian Consumer Law, other than a guarantee under section 51, 52 or 53 of the Australian Consumer Law, is hereby limited to:

- (a) in the case of goods, at Landgate's option, any one or more of the following:
 - (i) the replacement of the goods or the supply of an equivalent product;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring an equivalent product; or
 - (iv) the payment of the cost of having the goods repaired; or
 - (b) in the case of services, at the Landgate's option;
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- 15.3 This **clause 15.3** applies where any act, statute, rule or regulation (other than Division 1 of Part 3-2 of the Australian Consumer Law and regulations made in relation thereto) ("**other law**") implies in this Agreement any term, condition, warranty, right or obligation ("**implied term**"), and the other law avoids or prohibits a provision in a contract excluding or modifying the application of, exercise of or liability under such implied term. To the extent permitted by law, the liability of Landgate for any breach by it of such implied term is limited, at Landgate's option, to any one or more of the remedies referred to in **clauses 15.2(a)** or **15.2(b)** above.
- 15.4 This clause will survive termination of this Agreement.

16 Limitation of Liability

- 16.1 To the fullest extent permitted by law and this Agreement, Landgate will not be subject to any liability (tortious (including negligence) or otherwise) to the Licensee or anyone else for any loss or damage (including consequential loss or damage), however caused which may be directly or indirectly suffered in connection with this Agreement, including from the use of, reliance on, or any error with the Location Information Product.
- 16.2 To the extent liability cannot be excluded, the total liability of Landgate to the Licensee for all claims, in aggregate, is limited to the amount paid or payable by the Licensee to Landgate during the first 12 months of this Agreement.
- 16.3 This clause will survive the termination of this Agreement.

17 Release and Indemnity

- 17.1 To the fullest extent permitted by law and this Agreement, the Licensee irrevocably releases Landgate from any claim that the Licensee may have against Landgate in connection with this Agreement.
- 17.2 To the fullest extent permitted by law and this Agreement, the Licensee must indemnify and keep indemnified, hold harmless and defend Landgate in respect of all claims, demands, actions, suits and damages for loss, damage or injury, including indirect or consequential loss, arising from:
- (a) the Licensee's or any third party's use or reliance on the Location Information Product whom the Licensee provided access, either deliberately or inadvertently, whether or not any such reliance is notified to Landgate;
 - (b) any unlawful, negligent (act or omission), tort or wilful misconduct of the Licensee, the Licensee's Consultant or Licensee's End Users arising in relation to this Agreement;
 - (c) any breach of this Agreement by the Licensee or Licensee's Consultant;
 - (d) any breach of Landgate's Intellectual Property Rights or privacy legislation by the Licensee or any third party to whom the Licensee provided access, either deliberately or inadvertently, to any Location Information Product;

- (e) the Licensee's modification, combination, operation or use of the Location Information Product with computer programs or data not provided by Landgate, including as provided in any Value Added Product;
- (f) any legal costs, charges and expenses arising from this clause.

17.3 This clause will survive termination of this Agreement.

18 Default

18.1 The Licensee is in default if the Licensee fails to comply with any terms of this Agreement.

18.2 Landgate may, in the event of any default by the Licensee:

- (a) immediately without notice suspend part or all of the Licensee's access to the Location Information Product, until such time as the Licensee remedies the default;
- (b) charge the Licensee interest on any overdue amounts at a rate equal to 2% per cent above the applicable base lending rate of the Licensor's Bank, as determined by Landgate and calculated on a daily and cumulative basis from the payment due date until the date of payment in full;
- (c) charge and recover from the Licensee all costs reasonably incurred by Landgate in relation to the enforcement and/or collection of any overdue amounts; and
- (d) perform on behalf of the Licensee any obligations that the Licensee should have done or is required to do under this Agreement.

18.3 To the extent that Landgate is required to perform the Licensee's obligations or recover any outstanding amounts, the Licensee agrees:

- (a) to pay Landgate, within 7 days of receiving an invoice from Landgate, the full amount of such invoice without set-off or deduction for Landgate's costs and efforts; and
- (b) Landgate may immediately take action to recover any amount due to it as a liquidated debt.

19 Termination or Expiration

19.1 Landgate may terminate this Agreement immediately by written notice to the Licensee if:

- (a) the Licensee commits a breach of any of its obligations and has not remedied the breach within 14 days of being notified of the breach;
- (b) the Licensee's corporate structure, management, control or ownership materially changes;
- (c) the Licensee is wound up, becomes insolvent or has a liquidator, provisional liquidator, administrator, receiver, manager or receiver and manager appointed; or
- (d) the Licensee fails to comply with **clauses 9, 11 or 13**.

19.2 The Licensee may terminate this Agreement immediately by written notice to Landgate if:

- (a) Landgate commits a material breach of this Agreement and does not remedy the breach to the reasonable satisfaction of the Licensee within 14 days of notification; or
- (b) Landgate:
 - (i) ceases or takes steps to cease conduct its business in the normal manner; or
 - (ii) is wound up, becomes insolvent or has a liquidator, provisional liquidator, administrator or receiver appointed.

20 Obligations when Agreement Ends

20.1 Termination or expiration of this Agreement will not affect any accrued rights or liabilities of any party, including rights to injunctive relief or any liability to account for profits from any breach of this Agreement.

20.2 On the termination or expiration of this Agreement, the Licensee must:

- (a) immediately pay Landgate all fees and charges that are owing;
 - (b) immediately cease to use all Location Information Products;
 - (c) subject to **clause 20.3**, delete and expunge, or arrange for the deletion of, any Location Information Product obtained from Landgate, including all copies of any Location Information Product able to be disaggregated from its systems and records (in whatever form or medium held);
 - (d) return to Landgate, or delete and expunge, all of Landgate's Confidential Information;
 - (e) provide Landgate with written notice within 30 days of expiration or termination certifying that **clauses 20.2(a) to 20.2(d)** have been complied with;
 - (f) maintain the security and confidentiality of all of Landgate's Confidential Information that cannot be returned, deleted or expunged;
 - (g) co-operate with Landgate in every other respect, as it may reasonably require, to minimise any loss, damage or inconvenience to Landgate and its customers resulting from the expiration or termination of this Agreement; and
 - (h) permit Landgate or any person authorised by Landgate to inspect and audit the Licensee for compliance purposes in accordance with this clause.
- 20.3 Landgate acknowledges that the Licensee may continue to keep one secure copy of the Location Information Product for archiving, statutory and indemnity purposes if notified to Landgate, but may not further use or distribute any Location Information Product.
- 20.4 This clause will survive termination of this Agreement.

21 Further Term & Holding Over Period

- 21.1 This Agreement may be renewed for the Further Term provided:
- (a) the Licensee is not in breach of any terms and conditions of this Agreement;
 - (b) the Licensee makes a written request to Landgate that this Agreement be extended, at least 1 month prior to the expiration of the Term;
 - (c) Landgate, in its absolute discretion, agrees to that request; and
 - (d) the Licensee delivers any signed documentation required by Landgate.
- 21.2 If Landgate consents to the Further Term, the renewed agreement:
- (a) commences on the day after the expiration of this Term;
 - (b) will include any increase in fees and charges, in accordance with this Agreement; and
 - (c) is otherwise on the same terms and conditions of this Agreement, except for the exercised option for a Further Term.
- 21.3 If the Agreement is not extended, but the Licensee is not in arrears, continues to make any payments required and Landgate consents, then this Agreement will:
- (a) continue in operation in all respects during a Holding Over Period;
 - (b) be terminable by either party on not less than 30 days written notice; and
 - (c) require the Licensee to pay any fees and charges monthly in advance and increased in accordance with Landgate's standard practices.

22 Force Majeure

- 22.1 A party to this Agreement will not be liable for failure or delay in performance of its obligations under this Agreement to the extent caused by a Force Majeure Event, provided each party notifies the other as soon as they believe a Force Majeure Event has occurred.

- 22.2 If a failure or delay of performance due to a Force Majeure Event exceeds 60 days and renders performance of this Agreement impossible, either party may by notice to the other party, terminate this Agreement by notice in writing.
- 22.3 If this Agreement is terminated due to a Force Majeure Event, the obligations in **clause 20** remain as applicable in the circumstances of the Force Majeure Event.

23 Dispute Resolution

- 23.1 Before resorting to external dispute resolution mechanisms, the parties must attempt to settle by negotiation in good faith any dispute in relation to this Agreement and where practicable, each party will refer the matter to personnel who have authority to intervene and direct some form of resolution.
- 23.2 Either party may give the other party formal notice in writing of a dispute and if the dispute is not settled within 10 Business Days, it must be submitted to the dispute resolution process described in this **clause 23**.
- 23.3 It is agreed by both parties that the dispute resolution process will first consist of mediation.
- 23.4 In the absence of agreement, the mediation shall be conducted by a single mediator who is to be appointed by the *President of the Law Society of Western Australia* within 10 Business Days of request for appointment by one party to the other.
- 23.5 During the mediation:
- (a) the parties may not be represented by legal practitioners;
 - (b) the mediator shall determine the process for mediation; and
 - (c) the costs of the mediation shall be shared equally by the parties.
- 23.6 If the dispute remains unresolved after 30 days, either party may then have recourse to the courts.

24 Notices

Any notice given under this Agreement must:

- (a) be in writing and signed by a person duly authorised by the sender;
- (b) be addressed to the intended recipient at the address or email address specified in **clause 2**, or the address or email address last notified by the intended recipient to the sender; and
- (c) be given and will be taken to have been given or made:
 - (i) for delivery in person, when delivered;
 - (ii) for posting, 3 Business Days after posting (or 7 Business Days if to or from a place outside Australia);
 - (iii) for e-mail, when the email enters the recipient's inbox.

25 General Terms

- 25.1 The Licensee must do all things and sign all documents necessary to give effect to the provisions of this Agreement.
- 25.2 Any variation of the terms and conditions of this Agreement will only be binding if in writing and signed by both parties.
- 25.3 If there is any inconsistency between this Agreement and the Schedule to this Agreement, the Schedule prevails to the extent of that inconsistency.
- 25.4 This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements or representations, written or oral.

- 25.5 Waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.
- 25.6 A party may exercise any right at its discretion, and separately or concurrently with any another right. A single or partial exercise of a right by a party does not prevent a further exercise of that right or any other right. Failure by a party to exercise, or any delay in exercising, a right does not prevent its exercise.
- 25.7 The rights provided in this Agreement are cumulative with and not exclusive of the rights provided by law or available in equity independently of this Agreement.
- 25.8 Unless otherwise specified, the Licensee must not assign or transfer its rights under this Agreement unless it has first obtained the written consent of Landgate which may be withheld in its absolute discretion.
- 25.9 If the Licensee is a corporation (other than a public company as defined in the Corporations Act 2001 (Cth)) the Licensee is deemed to have assigned this Agreement if:
- (a) anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Licensee to another person; or
 - (b) there is any change in control of the Licensee within the meaning of the Corporations Act 2001 (Cth).
- 25.10 The Licensee is not by virtue of this Agreement a partner, joint venturer, employee or agent of Landgate, nor does the Licensee have any power or authority to bind or represent Landgate, or represent itself as such.
- 25.11 If any provision of this Agreement becomes invalid, illegal or unenforceable for any reason, this Agreement shall remain otherwise in full force apart from such provision which shall be deemed deleted or the provision shall be read down to the extent reasonable to make it valid and enforceable, at Landgate's election.
- 25.12 No decision, exercise of discretion, judgment or opinion or approval of any matter mentioned in this Agreement or arising from it, will be deemed to have been made by Landgate, unless in writing.
- 25.13 This Agreement is governed by the law of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia.

26 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) item numbers refer to those in the **Schedule**;
- (b) words in the singular include the plural and vice versa;
- (c) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (d) headings and bold print are for reference only and do not affect interpretation;
- (e) if any form of the word 'include' is used, it is to be read as if followed by the words 'without limitation';
- (f) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (g) where a party to this Agreement is more than one person, they are jointly and severally liable under the terms of this Agreement;
- (h) where time is to be calculated by reference to a day or event, that day or event is included;
- (i) any Schedule, Annexure or document entered into pursuant to this Agreement whether executed at the time of entering into this Agreement or later, is incorporated into and forms part of this Agreement;
- (j) a reference to:

- (i) a person includes a company, partnership, joint venture, unincorporated association, corporation, government or statutory body or authority, or body corporate;
- (ii) a person includes the person's legal personal representatives, executors, administrators, successors and permitted assigns;
- (iii) a party includes that party's officers, employees, contractors, agents, invitees and board members;
- (iv) a party which is a trustee is bound both personally and in its capacity as a trustee;
- (v) a statute, ordinance, code or other law includes regulations, by-laws and rules and any successive statutory instrument as modified or replaced;
- (vi) any agreement or document is a reference to that agreement or document as amended, supplemented or replaced from time to time;
- (vii) a currency, including dollars or \$ is to the Australian currency, unless otherwise stated;
- (viii) a right includes a benefit, remedy, discretion or power;
- (ix) time is to Western Standard Time, Perth, Western Australia;

27 Definitions

The following words and expressions are capitalised in this Agreement and have meanings assigned to them as shown below, except where the context implies otherwise.

Agreement means this document and includes any Schedule, Annexure or other document incorporated by reference into this document.

Approved Purpose means the purpose specified in **Item 9**.

Business Day means any day other than a Saturday, Sunday or public holiday in Western Australia.

Commencement Date means the date this Agreement takes effect, as specified in **Item 4**.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated in writing by Landgate as confidential;
- (c) the Licensee knows or reasonably ought to know is confidential and includes:
 - (i) information comprised in or relating to any Intellectual Property Rights of Landgate or the State of Western Australia;
 - (ii) Landgate information to which the Licensee has access other than information referred to in paragraph (i) that has any actual or potential commercial value to Landgate;
 - (iii) information relating to internal management, personnel, policies, strategies, practices and procedures of Landgate, the Government of the State of Western Australia or the Western Australian Public Sector; and
 - (iv) information in the Licensee's possession relating to the Landgate's clients or suppliers.

Consultant means any person (including employees of that person) who is externally hired by the Licensee or by the end user of the Location Information Product and whose use must be in accordance with the Approved Purpose and specifically with **Item 9**.

CPI means the Consumer Price Index All Groups Index Numbers for Perth, provided by the Australian Bureau of Statistics or if the basis on which it is determined is substantially altered then such basis as Landgate may reasonably determine to be as near to the Consumer Price Index previously referred to as is reasonably possible.

CPI Review Date means the annual date(s) on which the fees and charges made under this Agreement may be reviewed, as specified in **Item 11**.

Date of Agreement means the date specified in **Item 1**, or if blank, the date that the last party signs this Agreement.

Direct Marketing means any activity which makes it possible to offer goods or services or to transmit other messages to a person, organisation or segment of the population by post, telephone or other direct means (electronic or otherwise) aimed at informing or soliciting a response from the person, organisation or segment of the population as well as any service ancillary to the same.

Externalisation Restrictions means any restrictions imposed by this Agreement on the specified Location Information Product as identified in the last column of Error! Reference source not found..

Force Majeure Event means an event that is caused by an act or event beyond the reasonable control of the party (other than an obligation to pay money when it falls due) and that was not reasonably foreseeable at the time this Agreement was entered into, including:

- (a) *any natural disaster including lighting strikes, earthquakes, floods, storms, explosions and fires;*
- (b) *national emergencies, acts of war, acts of public enemies, sabotage and revolution; and*
- (c) *prohibitive governmental legislation, industrial disputes and strikes.*

Further Term means the period(s) specified in **Item 6** and includes any period of extension granted by Landgate under **clause 21**.

GST means goods and services tax payable under the GST Act.

GST Act means The New Tax System (Goods and Services Tax) Act 1999 (Cth).

Holding Over Period means the period during which the Parties continue the operation of this Agreement, despite no formal renewal, in accordance with **clause 21**.

Information Suppression Notice means a written notice given to the Licensee by Landgate following an application made to Landgate by a person for suppression of specified information about that person, from all Landgate name indices, for reasons of personal safety and security.

Intellectual Property Rights means all rights in and to the Location Information Product including copyright, trade-marks, design, patent, know-how and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic field and any application or right to apply for registration of any of these rights and any right to protect or enforce any of these rights.

Location Information Product means a collection or compilation of information as specified in **Item 10** that is:

- (d) in the Format specified in **Item 7**;
- (e) in the Metadata specified in **Item 8**; and
- (f) updated from time to time in accordance with the Update Frequency specified in **Item 10**.

Metadata means the specification of the Location Information Product which may consist of a number of elements describing the content, quality, currency, collection methods, accuracy of source data sets, processing history, archival procedures, projection specifications, scale, data dictionary and integration and analysis techniques.

Non-Commercial means the Location Information product is not to be used for commercial advantage or monetary compensation.

Special Conditions means the additional conditions of this Agreement specified in **Item 14** which take precedence over any other term of this Agreement in the event of any inconsistency.

Term means the duration of this Agreement specified or calculated in **Item 5**, provided this Agreement is not terminated early or otherwise extended.

Termination Date means the earliest of:

- (g) the date or latest date specified in **Item 5**;
- (h) if the Agreement is terminated earlier, that date; and
- (i) if the parties enter into a Further Term or Holding Over Period, the expiry date of the same.

SCHEDULE

Item 1 Date of Agreement (Landgate will complete)

Item 2 Details of Parties

Details	Landgate	Licensee
Entity Name:	Western Australian Land Information Authority, a body corporate established by <i>the Land Information Authority Act 2006</i> and trading as Landgate	
ABN:	86 574 793 858	
Contact:	Name: Number: Email: licensing@landgate.wa.gov.au	Name: Number: Email:
Serving Notices:	1 Midland Square, Midland, Western Australia, 6056	
Location Information Data Support	Geospatial Data Support Available: 8:30-17:00 Phone: (08) 9273 0724 Email: geodata@landgate.wa.gov.au	

Item 3 Agreement Number

[insert]

Item 4 Commencement Date (Landgate will complete)

[insert]

Item 5 Term and Termination Date (clause 19)

Three (3) years, terminating on [insert]

Item 6 Further Term (clause 21)

[Insert any option(s) to extend this Agreement]

Item 7 Format of the Location Information Product

[insert format information if required or Not Applicable]

Item 8 Metadata of the Location Information Product

Metadata statements are provided with the Information Product

Item 9 Approved Purpose (clause 1)

- 9.1 The Licensee is only approved to use the Location Information Product for the following purposes:
- (a) Internal Business Use, outlined in **Item 9.2**;
 - (b) Consultant Use, outlined in **Item 9.3**; and
 - (c) Limited External Use, outlined in **Item 9.4**.
- 9.2 **Internal Business Use** is use of the Location Information Product solely for the personal and internal administration and operation of the Licensee's business and does not entitle the Licensee to make available or to provide the Location Information Product, or any part thereof, to any third party outside the business.
- 9.3 **Consultant Use** is use where the Licensee engages a Consultant for a specific project requiring use of the Location Information Product and entitles the Licensee to disclose the Location Information Product to the Consultant, provided the Consultant:
- (a) only uses the Location Information Product for the Internal Business Use of the Licensee;
 - (b) receives no benefit from use of the Location Information Product except the fee paid by the Licensee;
 - (c) is otherwise bound by the terms of this Agreement (including deleting and removing all the Location Information Product from its systems upon the finalisation or termination of the consultancy); and
 - (d) if required by Landgate, enters into a Consultant's Confidentiality Deed in the form prescribed by Landgate.
- 9.4 **Limited External Use** is provision of the Location Information Product, or part thereof beyond the Licensee for the following view-only purposes of:
- (a) promoting the location of the Licensee's business (eg using the Location Information Product to demonstrate the location of the business or professional services offered);
 - (b) reporting on the Licensee's business (eg incorporation of the Location Information Product into annual reports on the Licensee); and
 - (c) including part of the Location Information Product as part of the Licensee's professionally licensed service offering (eg professionally licensed real estate agent including in a brochure for prospective property buyers);
- provided that the Limited External Use rights in **Items 9.4(a) to (c)** comply with the following conditions:
- (d) the Location Information Product must only be externalised if permitted and in accordance with any Externalisation Restrictions identified at **Item 10**;
 - (e) the Location Information Product must be geographically confined to no more than a single project area no larger than 100,000 square meters unless otherwise approved by Landgate;
 - (f) the Licensee must not sell, provide or include the Location Information Product or part thereof as a product or part of a product offering;
 - (g) the Licensee must not make the Location Information Product available in a form that is capable of being copied, downloaded, reproduced, edited or extracted by any third party; and
 - (h) use by any third party must be limited to their personal and non-commercial use.

Note: for any further externalisation needs please contact your Account Manager or email licensing@landgate.wa.gov.au

Item 10 Location Information Product, Fees & Charges, Manner of Payment and Update Frequency, (clause 2)

All fees and charges are payable annually in advance and must be paid in the manner and by the due dates specified in the relevant invoice issued by Landgate. The Licensor reserves the right to amend the following information as required:

Location Information Product	Update Frequency	Charge	Externalisation Restrictions
Administrative Boundaries		\$	No restrictions
Aerial Photography		\$	Maximum zoom to 1:750
Cadastre		\$	Boundary measurements and lot area must not be displayed.
Crown Reserves		\$	No restrictions
Property Street Address		\$	No restrictions
Road Centreline		\$	No restrictions
Tenure		\$	Must not be externalised
Topographic - Large Scale		\$	No restrictions
Topographic - Medium & Small Scale		\$	No restrictions
		Licence Preparation Fee	\$
		Sub-Total	\$
		GST	\$
		TOTAL	\$

Item 11 CPI Review Date(s) (clause 3)

Annually on 1 July

Item 12 Insurance (clause 10)

- (a) \$10,000,000 product and public liability.
- (b) \$5,000,000 professional indemnity.

Item 13 Register (clause 7)

The Register must contain the name/registered business name/company name for all Consultants who access or receive the Location Information Product.

Item 14 Special Conditions

SAMPLE

SIGNING PAGE

Landgate's Execution

Signed for and on behalf of the)
Western Australian Land)
Information Authority in accordance)
with authorisation under section 87 of)
the *Land Information Authority Act*)
2006 in the presence of:)

Signature of authorised person

Name & position of authorised person (print)

Signature of Witness

Name of witness (print)

Date: / /

Licensee's Execution

Executed by (ABN.....) in accordance with section 127 of
the Corporations Act 2001:

Signature of Director

Signature of Director / Company Secretary

Name of Director (print)

Name (print)

Date: / /

Date: / /

OR

Executed by(ABN.....) in accordance with section 127 of the Corporations Act 2001:

Signature of Sole Director/Sole Secretary

Name of Sole Director/Sole Secretary (print)

Date: / /

OR

Signed on behalf of the Licensee)
who confirms that they have the)
authority to sign and in the presence of:)

Signature of authorised person

Name & position of Authorised person (print)

Signature of Witness

Name of witness (print)

Date / /