



LANDGATE LICENCE AGREEMENT FOR LAND INFORMATION PRODUCT

VERSION: 06042009

AGREEMENT NUMBER:

Between
WESTERN AUSTRALIAN LAND INFORMATION AUTHORITY
"LANDGATE"
and
NAME
"LICENSEE"



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This agreement ("Agreement") is made on the date shown in item 1 of the Schedule between Landgate and the Licensee specified in item 2 of the Schedule.

BACKGROUND

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

AGREED TERMS

1. 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 of the Schedule.

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 of the Schedule.

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 and agents of that person) engaged by the Licensee for a specific project for the Licensee's Internal Use, which requires that person to access or use any of the Land Information Product.

CPI means the Consumer Price Index All Groups Index Numbers for Perth the subject of Catalogue No. 6401.0 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.

Date of Agreement means the date that the last party executes 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 thereto.

Fees and Charges means the fees and charges specified in item 14 of the Schedule.

Function of a Public Nature has the meaning intended in section 16(9) of the *Land Information Authority Act 2006*.

Further Term means any period of specified in item 16 of the Schedule or any period of extension of the Agreement granted by Landgate.

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)*.

Intellectual Property Rights means all rights in and to the Land Information Product including copyright, trade mark, 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.

Internal Use means use for the Licensee's internal business or personal purposes only.

Land Information Product means a collection or compilation of individual land records such as tenure and sales evidence and are:

- specified in item 6 of the Schedule;
- in the form stated in item 7 of the Schedule;
- provided with the Metadata specifications set out in item 8 of the Schedule; and
- updated from time to time by Land Information Product Updates. .

Land Information Product Updates are intermittent updates to the Land Information Product.

Licence means the Licence granted by Landgate pursuant to clause 3 of this Agreement.

Metadata means the specification of the Land 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.

On-line on Demand means the Land Information Product made available by Landgate on-line publicly or privately via the Internet or direct access to anyone who wants access to it provided they have paid the prescribed charge.

Register means a record specifying whether the Land Information Product or Value Added Product is or has been accessed or supplied, and must be in the form required by item 13 of the Schedule.

Review Date means the date(s) specified in item 15 of the Schedule.

Site means the Licensee's business premises or authorised locations specified in item 10 of the Schedule.

Software means the computer program, code, algorithm (if any) incorporated or provided with the Land Information Product which is necessary to use the Land Information Product in accordance with this Agreement.

System means the Licensee's computer system including operating, application and database systems as specified in item 11 of the Schedule.

Term means the period of time beginning on the Commencement Date and ending on the Termination Date and, where the context requires, any Further Term granted under clause 19.

Termination Date means:

- (a) the date or latest date stated in item 5 of the Schedule;
- (b) if the Agreement is terminated earlier in accordance with clause 17, that date; or
- (c) if the parties enter into a Further Term, the expiry date of that Further Term.

Value Added Product means:

- (a) any output, compilation, creation, manufacture, service or assistance developed by the Licensee from or incorporating the Land Information Product in part or whole; or
- (b) the development of a new product or computer program that enhances, adds value, adds to, manipulates, personalises, interprets or filters the Land Information Product, or parts thereof.

WALIS means Western Australian Land Information System.

2. Interpretation

In this Agreement, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) a reference to a person includes a company, partnership or body corporate;
- (d) references to a person includes that person's legal personal representatives, executors, administrators, successors and permitted assigns;
- (e) a reference to a statute, ordinance, code or other law includes regulations, by-laws and rules;
- (f) a reference to any agreement or document is a reference to that agreement or document as amended, supplemented or replaced from time to time;
- (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) if a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (i) headings are inserted for ease of reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (j) references to time are to Western Standard Time, Perth, Western Australia;
- (k) where time is to be reckoned from a day or event, that day or the day of that event is to be included;
- (l) references to currency are to Australian currency unless otherwise stated;
- (m) when the day or last day for doing an act is not a Business Day in the place where that act is to be done, then the day or last day for doing the act will be the directly preceding Business Day in the place where that act is to be done;
- (n) any Schedule, Annexure or document entered into pursuant to this Agreement whether executed at the time of entering into this Agreement or later during the Term of this Agreement, is incorporated into and forms part of this Agreement; and
- (o) waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

3. Grant of Licence

- 3.1 Landgate grants to the Licensee a non-exclusive and non-transferable licence to use the Land Information Product specified in item 6 of the Schedule for the Approved Purpose at the Site for the Term for Internal Use only in accordance with the terms of this Agreement.

4. Intellectual Property Rights

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

© Western Australian Land Information Authority trading as Landgate (20 __)
 - (b) any Value Added Product created and distributed by the Licensee shall display the following notice:

Based on information provided by and with the permission of the Western Australian Land Information Authority trading as Landgate (20__)

5. Risk

- 5.1 Risk (but not title) in the Land 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.
- 5.2 The Licensee acknowledges that it uses the Land Information Product at its own risk and agrees that neither Landgate nor its board members, officers, employees or agents will be liable for any loss or damage occasioned to the Licensee by provision of the Land Information Product under this Agreement or use of it by the Licensee or its employees, agents or third parties and releases Landgate from any claim for any such loss or damage.

6. Alteration of nature and content of the Land Information Product

Landgate reserves the right to alter, correct or amend the nature and content of the Land Information Product from time to time and will endeavour to notify the Licensee in writing 30 days prior to any alteration or amendment being made. The alteration or amendment shall form part of the Land Information Product.

7. Out of Scope Matters

- 7.1 The Licensee agrees and acknowledges that:
- (a) Landgate is not required to install the Land Information Product on any equipment or to test whether the Land Information Product is capable of being processed on any equipment;
 - (b) Landgate is not required to provide any training in the use of the Land Information Product;

- (c) it is fully responsible for obtaining, and for the consequence of use of, hardware, Software, computer programs and any other thing necessary to make use of the Land Information Product.
- (d) Landgate does not represent or warrant to the Licensee that:
 - (i) the Land Information Product is error free or virus free;
 - (ii) the supply of the Land Information Product will be uninterrupted; or
 - (iii) the Land Information Product will provide any function not designated in any Land Information Product definition.

8. Licensee's Obligations

- 8.1 The Licensee must provide Landgate with access to any Value Added Product utilising the Land Information Product free of charge for the purpose of ensuring compliance by the Licensee with this Agreement.
- 8.2 The Licensee must, 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 Land Information Product or Value Added Product including but is not limited to privacy legislation.
- 8.3 The Licensee must not or permit any other person to, distribute, sell, transmit, licence, hire, let, trade or expose for sale the any Land Information Product or Value Added Product unless expressly authorised in writing by Landgate.
- 8.4 The Licensee may distribute the Land Information Product or Value Added Product as a part of a Function of a Public Nature providing the Licensee:
 - meets the requirements of section 16(9) of the *Land Information Authority Act 2006*;
 - meets WALIS Transfer Policy Guidelines as issued from time to time;
 - is specified on Landgate's Non Commercial Entity Schedule; and
 - does not derive any monetary gain.

9. Land Information Product Updates

- 9.1 Landgate will, subject to the provisions of this Agreement, provide the Licensee with Land Information Product Updates in the manner specified in item 12 during the Term. The Information Product Updates will form part of the Land Information Product, immediately on provision.
- 9.2 Landgate is under no obligation to supply Information Product Updates other than as stated in this clause 9.

10. Security

- 10.1 The Licensee must effect and maintain adequate security measures to ensure that any Land Information Product and/or Value Added Product are not used or accessed by any third party who is not permitted by this Agreement to use or have access to the same.
- 10.2 The Licensee must ensure that the Land Information Product and/or Value Added Product are kept in a secure manner to protect its value and prevent the Land Information Product or Value Added Product from being altered or changed without permission or being released without Landgate's authorisation.
- 10.3 The Licensee must:
 - (a) take all reasonable steps that a prudent operator in a similar situation would take to prevent unauthorised access, damage and interference to the Site and System including but not limited to those set out in items 10 and 11 of the Schedule;

- (b) take all reasonable steps that a prudent operator in a similar situation would take to protect the Land Information Product or Value Added Product against unauthorised access by any person including employees, agents and consultants or by computer programs including but not limited to viruses;
- (c) have formal procedures in place to:
 - (i) manage (eg granting, revoking and auditing) access to the Land Information Product or Value Added Product by any person including employees or by computer programs; and
 - (ii) authorise and record every access; and
- (d) store and archive the Land Information Product or Value Added Product and manage the development of a new Value Added Product behind a firewall that prevents unauthorised access of any kind and in particular access via the Internet.

10.4 The Licensee will ensure that its employees, agents and/or Consultants are aware of and agree to comply with the Licensee's security obligations contained in this Agreement, before providing access to the Land Information Product or Value Added Product.

10.5 The Licensee undertakes to only use the Land Information Product or Value Added Product on the System and at the Site specified in items 10 and 11 of the Schedule.

10.6 Landgate reserves the right to periodically test security of the Site and the System to ensure compliance with this clause 10 to Landgate's reasonable satisfaction.

11. Accounts, Audits, Consultants and Register

11.1 The Licensee:

- (a) must observe, perform and comply with the reasonable requirements of Landgate and the accounting and security audit requirements of the Auditor General and Commissioner of Taxation;
- (b) may provide the Land Information Product to a Consultant engaged by the Licensee for a specific project requiring use of the Land Information Product where the Consultant receives no benefit from use of the Land Information Product except the fee paid by the Licensee, provided, if required by Landgate, the Consultant has first completed, lodged with and had approved by Landgate a Consultant's Confidentiality Deed in the form set out in Annexure A unless the Consultant is engaged in respect of a Function of a Public Nature;
- (c) must keep a Register of Access from the Commencement Date up to and including the Termination Date; and
- (d) on receiving written notice, must permit Landgate or any person authorised by Landgate to inspect the Register of Access when and as required by Landgate.

12. Fees and Charges

12.1 The Licensee agrees to pay Landgate the fees and charges specified in item 14 of the Schedule in the manner specified and may include:

- (a) annual licence fee;
- (b) charge for the extraction and provision of the Land Information Product;
- (c) licence preparation charge; and
- (d) consultancy charge

12.2 All taxes, duties and charges arising out of or incidental to this Agreement shall be the responsibility of and payable by the Licensee.

12.3 All payments to be made by the Licensee are calculated without regard to GST. 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. 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.

13. Review of Fees and Charges

13.1 The Fees and Charges payable under this Agreement will be reviewed around the time of each Review Date to determine the Fees and Charges due from the relevant Review Date until the day before the next Review Date, if there is one, or the expiration of the Term.

13.2 Landgate will, without time being of the essence, give to the Licensee a notice specifying the new Fees and Charges.

13.3 The Fees and Charges payable following a Review Date:

(a) will not be less than the Fees and Charges payable immediately prior to the Review Date; and

(b) will be increased by a factor equal to the percentage increase in the annual CPI in the 12 month period preceding the relevant Review Date, or in the case of the first Review Date, the 12 month period preceding the Commencement Date.

14. Disclaimers and Release

14.1 To the extent permitted by law, Landgate will not be liable to the Licensee or anyone else for any loss or damage, however caused (including through negligence) which may be directly or indirectly suffered in connection with the use of the Land Information Product. This general disclaimer is not restricted or modified by any of the following specific disclaimers.

14.2 The Land Information Product is provided by Landgate in good faith on an "as is" basis. The Land Information Product is believed to be accurate and current at the date this Agreement was executed. The Licensee acknowledges that it should not act on the basis of anything contained in the Land Information Product without first obtaining specific professional advice.

14.3 The Land Information Product has been acquired from data from various sources and therefore is recorded and stored at different levels of reliability. The Licensee acknowledges that the Land Information Product may become erroneous over time. The Licensee shall ensure that Landgate is not liable for any loss, damage or injury suffered by the Licensee or by any other person consequent upon use of or reliance on the Land Information Product or upon the existence of any errors in the Land Information Product.

14.4 Notwithstanding anything contained in this Agreement, the Licensee shall ensure that Landgate has no liability for any claim which would not have been made but for the modification, combination, operation or use of the Land Information Product with computer programs or data not provided by Landgate.

14.5 Landgate does not warrant that the Land Information Product will be capable of being processed on any equipment or the System.

14.6 The Licensee acknowledges that the Land Information Product has not been prepared to meet the requirements of the Licensee or of any other person and that it is therefore the responsibility of the Licensee to ensure that the Land Information Product meets its own individual requirements.

14.7 To the extent permitted by law, no warranty, condition, undertaking or term, whether express or implied, statutory or otherwise, as to the condition, quality, reliability, accuracy or completeness, performance, merchantability or fitness for purpose of the Land Information Product are given or assumed by Landgate and all such warranties, conditions and undertakings are excluded.

14.8 Where any Act of Parliament implies any term into this Agreement, and that Act avoids or prohibits provisions in a contract excluding or modifying such term, that term shall be deemed to be included in this Agreement but Landgate's liability for breach of that term shall be limited in one or more of the ways (at Landgate's option) permitted by section 68A (1) of the *Trade Practices Act 1974* (Cth).

15. Limitation of Liability

15.1 The Licensee agrees that, subject only to clause 14.8, in no circumstances will Landgate be liable for damages, including indirect, special, incidental or consequential damages (including loss of existing or anticipated revenue) in connection with or arising out of the use of the Land Information Product or otherwise in connection with this Agreement, even if Landgate has been advised of the possibility of such damages.

15.2 The Licensee agrees that, subject only to clause 14.8, the liability of Landgate for all claims, in aggregate, which it may have against Landgate relevant to the Land Information Product (whether for breach of this Agreement, for negligence or otherwise), should be limited to the amount paid or payable by the Licensee to Landgate during the first 12 months of this Agreement.

16. Indemnity and Responsibility

16.1 The Licensee must indemnify (and keep indemnified) Landgate, its board members, officers, employees and agents in respect of all claims, demands, actions, suits and damages for loss, damage or injury (including indirect or consequential loss) resulting from:

- (a) the licensee's or any person's use or reliance on the Land Information Product whether or not any such reliance is notified to Landgate by the Licensee;
- (b) any breach of this Agreement and any tort or negligence by the Licensee or any Consultant in connection with this Agreement;
- (c) all breaches of Intellectual Property Rights by the Licensee or any third party to whom the Licensee provided access either deliberately or inadvertently; and
- (d) any legal costs, charges and expenses arising in respect of paragraphs (a) – (c) above except to the extent such loss is caused by Landgate's negligence or breach of this Agreement.

16.2 The Licensee agrees to:

- (a) notify Landgate of and to provide all information in its possession or under its control in respect of any infringement of Landgate's Intellectual Property Rights;
- (b) provide all reasonable assistance in any action taken or proposed to be taken by Landgate in enforcing its rights under this Agreement; and
- (c) 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 the Land Information Product.

16.3 This clause 16 shall survive termination of this Agreement.

17. Termination

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 or ownership 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 clause 24 of this Agreement,

then in respect of paragraphs (a), (b), (c) and (d) Landgate may terminate the Agreement immediately by written notice to the Licensee.

18. Obligations at the end of Agreement

- 18.1 On expiration or termination of this Agreement, the Licensee and any Consultant must immediately:
- (a) cease to use the Land Information Product;
 - (b) delete and expunge the Land Information Product from its Systems and records and return to Landgate, within 14 days of the Termination Date, all copies of the Land Information Product that is able to be disaggregated and is in its possession (in whatever form or medium it is held).
- 18.2 The Licensee may continue to keep one copy of the Land Information Product for archiving, statutory and indemnity purposes, but may not further use or distribute the Land Information Product. The obligation imposed by this clause also extends to any Consultant provided with the Land Information Product.
- 18.3 The Licensee shall provide to Landgate written certification specifying that clause 18.1 has been complied with within 7 days of the Termination Date.
- 18.4 The Licensee shall permit, given one Business Day written notice, Landgate or any person authorised by Landgate to inspect the Licensee's System and records for compliance purposes.
- 18.5 This clause 18 survives the termination of this Agreement.

19. Further Term and Holding Over

- 19.1 This Agreement will be renewed for the Further Terms (if any) set out in item 16 of the Schedule if the Licensee requests prior to the expiration of the Term that the Agreement be renewed and Landgate, in its absolute discretion, agrees to such request. The renewed agreement:
- (a) commences on the day after this Agreement expires;
 - (b) is for Fees and Charges which will be increased annually on each anniversary of the Commencement Date in accordance with clause 13 of the Agreement; and
 - (c) is otherwise on the terms and conditions contained in this Agreement but not including any provision for renewal for the last of the Further Terms.
- 19.2 If after the Termination Date this Agreement continues in operation by the payment and acceptance of the Fees and Charges, this Agreement shall continue in operation in all respects during the holding over period terminable by either party on not less than 30 days written notice. The Fees and Charges will be increased annually on each anniversary of the Commencement Date during any holding over period in accordance with clause 13 of the Agreement.

20. Insurance

- 20.1 The Licensee must effect and maintain during this Agreement a policy of:
- (a) public liability insurance for a sum not less than \$10,000,000; and
 - (b) professional indemnity insurance covering a Licensee's liability arising out of any act, neglect, error or omission made or done by or on behalf of the Licensee, its employees, agents, members, Consultants or contractors in connection with this Agreement of not less than \$1,000,000.
- 20.2 The Licensee shall, on request, produce to Landgate reasonable evidence (including if requested copies of policies) and provide certificates to verify that the Licensee has in effect the insurances required under this Agreement.

- 20.3 Where Landgate reasonably considers that additional insurance or increased limits to existing insurance may be necessary to cover occurrences and liabilities that may arise during the Term, the Licensee shall obtain such additional insurance or increase in limits.
- 20.4 No insurer of the Licensee may exercise rights of subrogation against Landgate.
- 20.5 Any policy of insurance affected by the Licensee under this Agreement must be taken out with a reputable and solvent insurer carrying on business in Australia.

21. Dispute Resolution

- 21.1 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 shall refer the matter to personnel who have authority to intervene and direct some form of resolution.
- 21.2 Either party may give the other party formal notice in writing of a dispute, whereupon if the dispute is not settled within 10 Business Days, it shall be submitted to the dispute resolution process described in clauses 21.3 and 21.4.
- 21.3 It is agreed by both parties that the dispute resolution process will first consist of mediation.
- 21.4 In the absence of agreement, the mediation shall be conducted by a single mediator. The mediator 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. 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.
- 21.5 If the dispute remains unsolved after 30 days and both Parties have made genuine attempts to resolve the dispute in accordance with the preceding sub-clauses, either Party may then have recourse to the courts.

22. Notices

Any Notices under this Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed to the intended recipient at the address, facsimile or email specified in item 2 of the Schedule or the address, facsimile or email last notified by the intended recipient to the sender; and
- (c) will be given and will be taken to have been given or made:
 - (i) when delivered, for delivery in person (including by overnight or international courier) or to the recipient's address;
 - (ii) 3 Business Days after posting (or 7 Business Days if from a place outside Australia), for *prepaid post*; or
 - (iii) at the time of transmission, for facsimile transmission provided that:
 - following transmission, the sender's facsimile machine produces a report confirming successful transmission of the facsimile in its entirety; and
 - if delivery or receipt occurs on a day which is not a Business Day or is later than 5pm (local time) on a Business Day, the Notice will be deemed duly given at the commencement of the next Business Day.

23. Confidentiality

- 23.1 The Parties must not disclose Confidential Information except in the circumstances of clause

23.4.

23.2 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.

23.3 A Licensee may provide the Land Information Product to a Consultant if:

- (a) the Consultant has signed and lodged with Landgate a *Confidentiality Deed* (in the form set out in Annexure A) if required by Landgate;
- (b) Landgate has approved in writing the provision of the Land Information Product to the Consultant; and
- (c) the Land Information Product is provided to the Consultant for a specific project, and the Consultant receives no benefit from the use of the Land Information Product, other than the Consultant's fee paid by the Licensee.

23.4 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;
- (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 (where Landgate is the disclosing Party).

23.5 This clause 23 will survive termination of this Agreement.

24. Privacy

24.1 The Licensee agrees to:

- (a) comply with the requirements of Western Australian and Federal 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, whether or not the Licensee is required by law to comply with the privacy legislation;
- (b) comply with any other reasonable direction relating to privacy given by Landgate, including those relating to Landgate's own privacy policies and procedures; and
- (c) not do anything which if done by Landgate would be a breach of privacy legislation.

24.2 Landgate, its board members, officers and employees will not be responsible for any actions, claims, cost, proceedings, suits or demands whatsoever arising out of any breach of privacy legislation by the Licensee or any other person or body corporate in relation to any Land Information Product or Value Added Product obtained under this Agreement.

24.3 The Licensee must not use any Land Information Product or Value Added Product for the purpose of Direct Marketing.

24.4 The Licensee must not release the Land Information Product or Value Added Product to any third party where that party proposes to use the Land Information Product or Value Added Product for the purpose of Direct Marketing.

24.5 The Licensee will provide any assistance requested by Landgate in relation to an investigation of an allegation of misuse of any Land Information Product or Value Added Product or contravention of privacy legislation.

24.6 This clause 24 will survive termination of this Agreement.

25. Variation

Any variation of the terms and conditions of the Agreement will only be binding if in writing and signed by both parties.

26. Entire Agreement

This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements or representations, written or oral, with respect to the Land Information Product.

27. Parties' Rights

A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that right, power or remedy or an exercise of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

28. Remedies

The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law or available in equity independently of this Agreement.

29. Assignment

The Licensee may not assign, transfer or sub-licence its rights under this Agreement unless it has first obtained the written consent of Landgate which may be withheld in its absolute discretion.

30. Status of Licensee

The Licensee:

- (a) will not represent itself or allow itself to be represented as a partner, employee or agent of Landgate;
- (b) is not by virtue of this Agreement a partner, employee or agent of Landgate, nor does the Licensee have any power or authority to bind or represent Landgate.

31. Severability

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.

32. Governing Law

This Agreement shall be construed and governed by the law of Western Australia.

SCHEDULE

Item 1 Date of Agreement

DATED THIS

DAY OF

20

Item 2 Details of Parties

	Landgate	Licensee
Name of Company / Organisation	Western Australian Land Information Authority, a body corporate established by the Land Information Authority Act 2006 and trading as Landgate	
ABN	86 574 793 858	
Contact Person	Account Manager, Land and Property Market.	
Address for service of Notices	1 Midland Square, Midland, Western Australia 6056	
Telephone	(08) 9273 7373	
Mobile		
Fax	(08) 9273 7655	
Email Address	licensing@landgate.wa.gov.au	
Web Address	www.landgate.wa.gov.au	

Item 3 Agreement Number

Item 4 Commencement Date

Item 5 Termination Date

Item 6 Description of Land Information Product

Insert relevant datasets

Item 7 Format of the Land Information Product

Insert Format

Item 8 Metadata of the Land Information Product

Metadata statements are provided with the Information

Item 9 Approved Purpose of Land Information Product

The Licensee may only use the Land Information Product in the lawful conduct of its business to:

Insert permitted purpose/s.

Item 10 Site

[See definition of Site]

Item 11 System

[See definition of System]

What steps is the Licensee required to take to prevent unauthorised access, damage and interference to its system? ie (Firewall, Security)

Item 12 Land Information Product Updates

Updates of the Land Information Product will be provided by Landgate on:

Insert appropriate update schedule and manner by which updates will be provided.

Item 13 Register of Access

The Register must contain the following information for all who access or receive the Land Information Product or Value Added Product:

- (i) Name/registered business name/company name
- (ii) Contact person's name
- (iii) Any other attribute nominated by Landgate

Item 14 Fees and Charges and Manner of Payment

Insert

Item 15 Review Date(s)

Annually on xxxxxxxxx

Item 16 Further Term

See clause 19

SIGNING PAGE

Landgate's Execution:

Signed for and on behalf of the Western Australian Land Information Authority in accordance with authorisation under section 88 of the *Land Information Authority Act 2006*, in the presence of:

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: / /



CONFIDENTIALITY DEED

WESTERN AUSTRALIAN LAND INFORMATION AUTHORITY
trading as

LANDGATE

(Disclosing Party)

AND

[OTHER PARTY]

(Receiving Party)

PARTIES

WESTERN AUSTRALIAN LAND INFORMATION AUTHORITY
Trading as Landgate
ABN 86 574793 858
1 Midland Square, Midland WA 6936
(Disclosing Party)

[NAME OF RECEIVING PARTY]
ACN []
Address
(Receiving Party)

BACKGROUND

A The Disclosing Party possesses the Confidential Information. The Receiving Party wants to have access to the Confidential Information for the Specified Purpose.

B The Disclosing Party has agreed to disclose the Confidential Information to the Receiving Party subject to the terms and conditions of this Agreement.

AGREEMENT

1 ACCESS

The Receiving Party acknowledges that the Receiving Party may be given access to certain Confidential Information of the Disclosing Party for the Specified Purpose.

2 OBLIGATION OF CONFIDENTIALITY

2.1 Confidentiality

In consideration of the Disclosing Party allowing the Receiving Party to have access to the Confidential Information, the Receiving Party agrees that (i) it will keep confidential the Confidential Information; and (ii) it will ensure that its officers, employees, contractors, agents and advisors will keep confidential the Confidential Information.

2.2 Continuing Obligation

The Receiving Party shall continue to be bound by the covenants and obligations contained in this Agreement even if (a) this Agreement is terminated for any reason, or (b) the Specified Purpose comes to an end for any reason.

3 RECEIVING PARTY'S OBLIGATIONS

3.1 Non-Disclosure and Use

(a) Unless it has the prior written consent of the Disclosing Party to do so, the Receiving Party will not (i) disclose any of the Confidential Information to any other person; or (ii) use any of the Confidential Information otherwise than for the Specified Purpose.

(b) The Receiving Party will ensure that its officers, employees, contractors, agents and advisors do not (i) disclose any of the Confidential Information to any other person; or (ii) use any of the Confidential Information otherwise than for the Specified Purpose. This clause 3.1(b) does not apply if the Disclosing Party has given its prior written consent for the disclosure or use.

3.2 Uncertainty

If the Receiving Party is uncertain as to whether any information is Confidential Information, the Receiving Party will treat the information as if it was Confidential Information unless and until the Disclosing Party agrees in writing that the information is not Confidential Information.

3.3 Precautions

The Receiving Party will take all reasonable precautions to (i) maintain the confidentiality of Confidential Information, (ii) prevent the unauthorised disclosure of the Confidential Information, and (iii) prevent the unauthorised use of the Confidential Information.

3.4 Unauthorised Disclosure or Use

If the Receiving Party becomes aware of any actual or likely unauthorised disclosure or use of the Confidential Information, then the Receiving Party will (i) immediately notify the Disclosing Party of the actual or likely unauthorised disclosure or use of the Confidential Information, and (ii) take all steps which the Disclosing Party may reasonably require in relation to such actual or likely unauthorised disclosure or use.

3.5 Return of Confidential Information

At the conclusion of the Specified Purpose or upon the written request of the Disclosing Party, the Receiving Party will, at its own expense, immediately deliver to the Disclosing Party all records and materials (and copies of those records and materials) containing or embodying the Confidential Information that are in the possession of (a) the Receiving Party, its officers, employees, contractors, agents or advisors, or (b) any other person to whom the Receiving Party has disclosed all or any of the Confidential Information (whether or not with the consent of the Disclosing Party).

4 Exceptions

The Receiving Party will not be bound to keep confidential any Confidential Information if and to the extent that any one or more of the following circumstances occur.

(a) The Confidential Information is, or becomes part of the public domain otherwise than by breach of this Agreement by the Receiving Party.

(b) Prior to the disclosure of the Confidential Information by the Disclosing Party to the Receiving Party, the Confidential Information was already in the Receiving Party's possession as a result of the Confidential Information having been lawfully obtained by the Receiving Party from another person without any restriction as to use or disclosure.

(c) After the disclosure of the Confidential Information by the Disclosing Party to the

Receiving Party, the Confidential Information is lawfully obtained by the Receiving Party from another person without any restriction as to use or disclosure.

(d) The Confidential Information is required to be disclosed by the operation of any law, stock exchange, judicial or parliamentary body or governmental agency.

(e) The Disclosing Party has given its written consent to the disclosure of the Confidential Information.

(f) The Confidential Information is disclosed by the Receiving Party to its officers, employees, agents, contractors or professional advisers who have agreed in writing to keep confidential the Confidential Information.

(g) If the Recipient Party is an agent, agency, department or instrumentality of the State of Western Australia, then the Recipient may disclose the Confidential Information to (i) any Western Australian government Minister, or (ii) the Western Australian Parliament, or (iii) any committee or sub-committee of the Western Australian Parliament.

5 REMEDY

5.1 Financial and Other Loss and Damage

The Receiving Party acknowledges and accepts that (i) the Disclosing Party would suffer financial and other loss and damage if there were any breach of this Agreement, and (ii) monetary damages would be an insufficient remedy.

5.2 Injunctive Relief

The Receiving Party acknowledges and accepts that, in addition to any other remedy which may be available in law or equity, the Disclosing Party is entitled to injunctive relief to prevent a breach of this Agreement and to compel specific performance of this Agreement.

5.3 Costs and Expenses

Following a written request from the Disclosing Party, the Receiving Party will immediately reimburse the Disclosing Party for all costs and expenses (including legal costs and disbursements on a full indemnity basis) incurred by the Disclosing Party in enforcing the obligations of the Receiving Party under this Agreement.

6 INDEMNITY

6.1 Indemnity for Costs

The Receiving Party will indemnify the Disclosing Party against all costs, expenses, actions or claims directly or indirectly incurred or suffered by the Disclosing Party as a result of any breach of this Agreement by the Receiving Party.

6.2 Scope of Indemnity

The indemnity in clause 6.1 extends to and includes all costs, damages and expenses incurred by the Disclosing Party in defending and/or settling any such costs, expenses, actions, suits proceedings, claims or demands (including legal costs and disbursements on a full indemnity basis).

7 CUMULATIVE RIGHTS

The rights under or arising out of this Agreement do not exclude any other rights of either party.

8 WAIVER

8.1 No Waiver Except by Notice in Writing

No right under this Agreement is waived or deemed to be waived except by notice in writing signed by the party waiving the right.

8.2 No Waiver of Subsequent Breaches

A waiver by one party under clause 8.1 does not prejudice its rights in respect of any subsequent breach of this Agreement by the other party.

8.3 No Waiver by Extension or Forbearance

A party does not waive its rights under this Agreement because it grants an extension or forbearance to the other party.

9 VARIATION

A variation of this Agreement will not be effective unless it is in writing and signed by the parties.

10 GOVERNING LAW AND JURISDICTION

10.1 Governing Law

This Agreement is governed by the laws of the State of Western Australia.

10.2 Jurisdiction

The parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Western Australia.

11 DEFINITIONS

The following definitions apply to the interpretation of this Agreement.

Confidential Information means any one or more of the following.

- (a) All trade secrets, ideas, know-how, concepts and information whether in writing or otherwise relating in any way to the matters described in item 1 of the Schedule.
- (b) All other information relating to the Disclosing Party and its affairs or businesses, sales, marketing or promotional information, which is not in the public domain.

Confidential Information includes (i) all information which the Receiving Party becomes aware of (as well as information which is specifically disclosed), and (ii) any item referred to above which is in the Disclosing Party's power, possession or control concerning or belonging to any other person.

Schedule means the schedule to this Agreement.

Specified Purpose means the purpose set out in item 2 of the Schedule.

SCHEDULE

1 CONFIDENTIAL INFORMATION

1.1 This item requires VERY careful consideration as it describes the information which is to be protected.

1.2 The information to be protected should be clearly identified and then an accurate description of that information needs to be inserted in this item of the schedule.

1.3 Great care needs to be taken to ensure that description includes all of the information which is to be protected.

1.4 The following is included as an example of what Landgate has previously included in this item.

These notes should be deleted from the final draft.

2 SPECIFIED PURPOSE

2.1 Insert a description of the specified purpose for which the Confidential Information is being disclosed.

These notes should be deleted from the final draft.

