

LI Trial Licence

Version: 200219
Agreement number: TBA

Between
Western Australian Land Information Authority (Landgate)

And
Customer Name (Licensee)



Locate



Value



Secure



Enable

Licensing, Landgate, Version 200219

Table of Contents

Principal Terms	3
Execution Page	5
General Terms and Conditions	7
Parties	7
Background	7
Agreement.....	7
1. Grant of Licence.....	7
2. Fees and Charges.....	7
3. Licensee's Obligations	7
4. Development of Products.....	8
5. Intellectual Property Rights	8
6. Risk	8
7. Confidentiality.....	9
8. Privacy.....	9
9. Acknowledgement and Out of Scope Matters	9
10. Limitation of Liability	10
11. Release and Indemnity	11
12. Termination	11
13. General Terms.....	12
14. Interpretation.....	12
15. Definitions	13

Principal Terms

Item 1 Date of Agreement (Landgate will complete)

Item 2 Details of Parties

Details	Landgate	Licensee
Legal Entity Name	Western Australian Land Information Authority, a body corporate established by the <i>Land Information Authority Act 2006</i> and trading as Landgate	
ABN	86 574 793 858	
Licence Contact Person		
Street Address for Service of Notices	1 Midland Square, Midland, Western Australia 6056	
Telephone	(08) 9273 0778	
Mobile		
Email Address	licensing@landgate.wa.gov.au	
Web Address	www.landgate.wa.gov.au	
Support	(08) 9273 7683 customerexperience@landgate.wa.gov.au	

Item 3 Agreement Number

Item 4 Commencement Date (Landgate will complete)

Item 5 Expiry Date

Item 6 Location Information Product

Item 7 Format of the Location Information Product

Item 8 Metadata of the Location Information Product

Item 9 Approved Purpose

- 9.1 Subject to any formal understanding made with Landgate in accordance with **clause 4**, the Licensee must only use the Location Information Product for:
- (a) Evaluation Use, outlined in **Item 9.2**; and
 - (b) Consultant Use, outlined in **Item 9.3**.
- 9.2 **Evaluation Use** is use of the Location Information Product only for evaluation, testing and demonstration purposes. This includes demonstrating the Location Information Product or any developed Value Added Product to third parties. However, this does not include or entitle the Licensee to:
- (a) load any of the Location Information Product or any developed Value Added Product or any part thereof onto any third parties system or equipment; or
 - (b) provide the third party with any copies or any part of the Location Information Product or Value Added Product; or
 - (c) make and sell or provide any Location Information Product or Value Added Product (commercialise) as the provisions of **Clause 4** of this Agreement would otherwise apply.
- 9.3 **Consultant Use** is use:
- (a) where the Licensee engages a Consultant for a specific project requiring use of the Location Information Product, the Licensee can disclose the Location Information Product to the Consultant, provided the Consultant:
 - (i) only uses the Location Information Product for the Evaluation Use of the Licensee;
 - (ii) receives no benefit from use of the Location Information Product except the fee paid by the Licensee;
 - (iii) is otherwise bound by the terms of this Agreement (including deleting and removing all the Location Information Product from their systems upon the finalisation or termination of the consultancy); and
 - (iv) if required by Landgate, enters into a Consultant's Confidentiality Deed in the form prescribed by Landgate.

Item 10 Fees and Charges

Not applicable.

Item 11 Special Conditions

Not applicable.

Execution Page

Executed as a Deed

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 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 / /

General Terms and Conditions

Parties

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

Background

- A. The Licensee wants to access or use the Location Information Product for evaluation, testing or demonstration purposes for possible inclusion in existing, or the development of new Value Added Products.
- B. Landgate is prepared to grant the Licensee a licence to use the Location Information Product on a trial basis in accordance with the terms and conditions of this Agreement.

Agreement

1. Grant of Licence

- 1.1. 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**.
- 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. Licensee's Obligations

- 3.1 The Licensee must:
 - (a) not distribute, sell, licence, hire, let, trade or expose for sale or hire the Location Information Product to any third party;
 - (b) 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;
 - (c) not itself, or permit any other person to distribute, sell, transmit, licence, hire, let, trade or expose for sale any Location Information Product unless expressly authorised in writing by Landgate;
 - (d) act in good faith at all times towards Landgate and provide assistance and co-operation as practicable, on request by Landgate;
 - (e) provide Landgate, upon request, access free of charge to its systems, accounts and records in connection with the Location Information Product solely for the purpose of ensuring compliance by the Licensee with this Agreement;

- (f) provide technological and security measures to ensure that all Location Information Product which the Licensee is responsible for is physically and electronically secure from unauthorised use or access; and
 - (g) effect and maintain for the Term, at its sole expense, valid and enforceable insurance with a reputable and solvent insurer for the scope and amount of insurance that a prudent operator in a similar situation would maintain.
- 3.2 The Licensee is permitted to incorporate and combine other data with the Location Information Product, provided that no change is made to the spatial integrity of the Location Information Product.

4. Development of Products

- 4.1 If the Licensee creates a Value Added Product, then **clause 3** of this Agreement applies to the Value Added Product as if the references in **clause 3** to "Location Information Product" were references to "Value Added Product".
- 4.2 If the Licensee wants to conduct any activity which would contravene **clause 3** of this Agreement, then the Licensee must apply to Landgate to become a Value Added Reseller. This **clause 4.2** applies to any activity in relation to the Location Information Product or a Value Added Product.
- 4.3 If a Licensee applies to become a Value Added Reseller, Landgate will determine in its absolute discretion whether such application is to be granted, giving due consideration to Landgate's commercial and legislative objectives and obligations.

5. Intellectual Property Rights

- 5.1 The Licensee only acquires the right to use the Location Information Product in accordance with this Agreement and only during the Term. The Licensee does not acquire any rights of ownership in the Location Information Product.
- 5.2 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).
- 5.3 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.
- 5.4 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.
- 5.5 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:

'© 20__ Western Australian Land Information Authority'

- 5.6 The Licensee must ensure that all Value Added Products acknowledge Landgate's contribution to the creation of the Value Added Product.

6. Risk

- 6.1 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.
- 6.2 The Licensee acknowledges and agrees that:
 - (a) it uses the Location Information Product at its own risk;
 - (b) subject to **clause 10**, Landgate will not be liable for any loss or damage occasioned to the Licensee by provision of the Location Information Product under this Agreement or use by the Licensee; and
 - (c) Landgate is released from any claim for any such loss or damage.

7. Confidentiality

- 7.1 The parties must not disclose Confidential Information except in the circumstances of this clause.
- 7.2 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.
- 7.3 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;
 - (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).
- 7.4 This clause will survive termination of this Agreement.

8. Privacy

- 8.1 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, whether or not the Licensee is required by law to comply with the privacy legislation;
 - (b) comply with any 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.
- 8.2 Landgate will not be responsible for any actions, claims, costs, 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 Location Information Product.
- 8.3 The Licensee must not use any Location Information Product for the purpose of Direct Marketing.
- 8.4 The Licensee must not 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.
- 8.5 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.
- 8.6 This clause will survive termination of this Agreement.

9. Acknowledgement and Out of Scope Matters

- 9.1 The Licensee acknowledges that:
 - (a) the Location Information Product:
 - (i) 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 Products without first obtaining specific professional advice;
 - (ii) 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
 - (iii) has not been prepared to meet the requirements of the Licensee or of any other person and it is the sole responsibility of the Licensee to ensure that the Location Information Product meets its own individual requirements;

- (b) 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.
- (c) Landgate is not required to:
 - (i) install the Location Information Product on any equipment or to test whether the Location Information Product is capable of being processed on any equipment;
 - (ii) to provide any training in the use of the Location Information Product;
- (d) Landgate does not represent or warrant to the Licensee that:
 - (i) the Location Information Product is error free or virus free;
 - (ii) the supply of the Location Information Product will be uninterrupted;
 - (iii) the Location Information Product will provide any function not designated in any Location Information Product definition; and
 - (iv) the Location Information Product will be capable of being processed on any equipment or System of the Licensee.

10. Limitation of Liability

- 10.1 To the fullest extent permitted by law and this Agreement, Landgate will not be subject to any liability (contractual, 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. This general disclaimer is not restricted or modified by any of the following specific disclaimers.
- 10.2 The Licensee must ensure that Landgate will not be liable for any claim arising from the modification, combination, operation or use of the Location Information Product with computer programs or data not provided by Landgate.
- 10.3 Subject to this **clause 10**, 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.
- 10.4 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.
- 10.5 Pursuant to section 64A of the Australian Consumer Law, this **clause 10.5** 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.
- 10.6 This **clause 10.6** 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 10.5(a) or 10.5(b)** above.

10.7 This clause will survive termination of this Agreement.

11. Release and Indemnity

- 11.1 To the fullest extent permitted by law, the Licensee irrevocably releases Landgate from any claim that the Licensee may have against Landgate in connection with this Agreement.
- 11.2 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 in connection with or arising from:
- (a) the Licensee’s or any person’s use or reliance on the Location Information Product, whether or not any such reliance is notified to Landgate;
 - (b) any unlawful, negligent (act or omission) or wilful misconduct of the Licensee, Sub-Licensee or Consultant arising in relation to this Agreement;
 - (c) any breach of this Agreement, tort or negligence by the Licensee, Sub-Licensee or any Consultant in connection with this Agreement;
 - (d) any breach of Intellectual Property Rights by the Licensee or any third party to whom the Licensee provided access, either deliberately or inadvertently, to any Location Information Product; and
 - (e) any legal costs, charges and expenses arising from this **clause 11.2**, except to the extent such loss is caused by Landgate’s negligence or breach of this Agreement.
- 11.3 This clause will survive termination of this Agreement.

12. Termination

- 12.1 Landgate may terminate this Agreement immediately by written Notice to the Licensee if:
- (a) the Licensee commits a breach of any term of this Agreement 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 changes; and
 - (c) the Licensee is wound up, becomes insolvent or has a liquidator, provisional liquidator, administrator, receiver, manager or receiver and manager appointed.
- 12.2 Any termination 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.
- 12.3 On termination the Licensee must immediately:
- (a) pay Landgate all fees and charges that are owing;
 - (b) cease to use all Location Information Products;
 - (c) delete and expunge, or arrange for the deletion of any Location Information Products obtained from Landgate, including all copies of the Location Information Product that are 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 a written Notice certifying that **clauses 12.3(a) to (d)** have been complied with, within 14 days of the Termination Date;
 - (f) maintain the security and confidentiality of all of Landgate’s Confidential Information;
 - (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.

13. General Terms

- 13.1 The Licensee must do all things and sign all documents necessary to give effect to the provisions of this Agreement.
- 13.2 Any variation of the terms and conditions of this Agreement will only be binding if in writing and signed by both parties.
- 13.3 If there is any inconsistency between this Agreement and the Schedule to this Agreement, the Schedule prevails to the extent of that inconsistency.
- 13.4 This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements or representations, written or oral.
- 13.5 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.
- 13.6 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.
- 13.7 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.
- 13.8 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.
- 13.9 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).
- 13.10 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.
- 13.11 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.
- 13.12 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.

14. 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) any gender includes the other genders;
- (d) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (e) headings and bold print are for reference only and do not affect interpretation;
- (f) if any form of the word 'include' is used, it is to be read as if followed by the words 'without limitation';
- (g) 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;

- (h) where a party to this Agreement is more than one person, they are jointly and severally liable under the terms of this Agreement;
- (i) where time is to be calculated by reference to a day or event, that day or event is included;
- (j) 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;
- (k) waiver by any party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach;
- (l) 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.

15. 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**.

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) engaged by the Licensee for a specific project.

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.

Expiry Date means the date specified in **Item 5**.

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 Location Information Product including copyright, trademarks, 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 the collection or compilation of information as specified in **Item 6** and includes where applicable any Value Added Product created from the Location Information Product.

Special Conditions means the additional conditions of this Agreement specified in **Item 11**.

Term means the term of this Agreement commencing on the Commencement Date and expiring on the Expiry Date.

Value Added Product means any use made of the Location Information Product by the Licensee, including:

- (a) any data output, compilation, creation, manufacture, service or assistance, which incorporates the Location Information Product, in whole or in part; and
- (b) the development of a new product or computer program that enhances, adds value, adds to, manipulates, personalises, interprets or filters the Location Information Product, or parts thereof.

Value Added Reseller means the party who develops a Value Added Product for the purpose of display, distribution, sale, licence, hire, let or trade of the Value Added Product to an End User.