GOVERNMENT OF WESTERN AUSTRALIA

Landgate

# Commercial Value Added Reseller Licence

## Principal Terms
## General Terms and Conditions

Agreement number:

**Between**
Western Australian Land Information Authority
(**Landgate**)

**and**
(Licensee)

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# Principal terms

**Item 1** **Date of agreement** [Landgate to complete]

**Item 2** **Parties details**

| Details | Landgate | Licensee |
|---|---|---|
| **Legal entity name** | 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 | |
| **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<br>customerexperience@landgate.wa.gov.au | |

**Item 3** **Term** [e.g. 3] years
**Commencement date** [Landgate to complete]
**Termination date** [Landgate to complete]

**Item 4** **Further term** (clause 28)

**Item 5** **Territory**

Worldwide

**Item 6** **Annual charge** (clause 6)

The Annual Charge payable during the first year of the Term is $ (excl. GST) per Topographic map series as per Item 8, plus a Licence management fee of $ (excl. GST) and shall be reviewed from time to time in accordance with clauses 6 and 7.

**Item 7** **Approved purpose** (clause 5)

The Licensee must not use the Location Information Product for any purpose other than for:

(a) Value Added Reseller Use
(b) Consultant Use
(c) Internal Business Use

**Item 8** **Location Information Product and update frequency** (clause 10)

| Number | Location Information Product | Update Frequency |
|---|---|---|
| 1 | Topographic Maps – 1:25,000 | As they become available if required by Licensee |
| 2 | Topographic Maps – 1:50,000 | As they become available if required by Licensee |
| 3 | Topographic Maps – 1:100,000 | As they become available if required by Licensee |

**Item 9** **Sub-VAR's details (clause 14)**

| Details | Sub-VAR |
|---|---|
| **Legal Entity Name:** | |
| **ABN/ACN:** | |
| **Contact:** | |
| **Address:** | |
| **Telephone:** | |
| **Mobile:** | |
| **Email:** | |
| **Web Address:** | |

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**Item 10** **Format** (clause 10)

GeoTIFF raster files

**Item 11** **Metadata** (clause 10)

Metadata statement and description of Location Information Product accessible at:

**Item 12** **Copyright notice** (clause 8.5)

"Information contained within this product includes location information product licensed from Western Australian Land Information Authority (WALIA) trading as Landgate. Copyright in the location information product remains with WALIA. WALIA does not warrant the accuracy or completeness of the location information product or its suitability for any particular purpose."

**Item 13** **CPI review date** (clause 7)

Annually on 1 July

**Item 14** **Register** (clause 15)

The Register must contain the following information for all Consultants who are granted access to Location Information Products or Value Added Products, Sub-VARs who access Value Added Products, and where reasonably possible, for all End Users who access or receive Value Added Products:

(a) name - including registered business name and company name (as applicable)
(b) contract commencement date and expiry
(c) date of access
(d) Location Information Product(s) or Value Added Products accessed
(e) any other reasonable information requested by Landgate

**Item 15** **Insurance** (clause 16)

(a) **Workers compensation insurance:**
Workers compensation insurance in accordance with the provisions of and for an amount required under any statute relating to workers or accident compensation in any Australian State or Territory or other jurisdiction where the Licensee's employees or workers normally reside or where the respective contracts of employment were made and if permitted at law:
(i) employer's liability at common law; and
(ii) indemnify the principal for any claims and liability that may arise under the applicable legislation.

(b) **Public and products liability**:
Public and products liability insurance covering the legal liability of the Licensee and its Consultants arising out of the products and services provided by the Licensee under this Agreement for an amount of:
(i) not less than $10 million for any one occurrence;
(ii) unlimited in the number of occurrences happening in the period of insurance for public liability; and
(iii) limited in the annual aggregate to $10 million for products liability.

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(c) **Professional indemnity:**

Professional indemnity insurance covering the legal liability of the Licensee and its Consultants under this Agreement arising out of any act, negligence, error or omission made or done by or on behalf of the Licensee and its Consultants in connection with this Agreement for a sum of $5 million for any one claim and in the annual aggregate, with a provision of one automatic reinstatement of the full sum insured in any one period of insurance.

Professional indemnity insurance must include:

(i) fraud and dishonesty;
(ii) defamation;
(iii) infringement of intellectual property rights;
(iv) loss of or damage to documents and data;
(v) breach of Australian Consumer Law;
(vi) the vicarious liability of Landgate arising out of the Licensee's professional services; and
(vii) the vicarious liability of the Licensee arising out of duties of all persons engaged by the Licensee in connection with this Agreement.

**Item 16** **Special conditions** (clause 12.1(n))

[Insert special conditions] OR [Not Applicable]

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# Execution page

The Parties agree to and accept the terms of this Agreement, which includes the terms set out in the General Terms and Conditions by signing below.

**Signed** for and on behalf of 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 and position of authorised person

_____
Signature of witness

_____
Name of witness (print)

**Licensee's execution**

**Executed** by
in accordance with section 127 of the *Corporations Act 2001*:

_____ _____
Signature of Director Signature of Director/Company Secretary

_____ _____
Name of Director Name of Director/Company Secretary

OR

**Executed** by in
accordance with section 127 of the *Corporations Act 2001*:

_____ _____
Signature of sole Director Name of sole Director/sole Company Secretary

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OR

**Signed** by )
in the presence of: )

_____

_____ _____

Signature of witness

Name of witness (print

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 and position of authorised person (print)

_____

Signature of witness

_____

Name of witness (print)

**Date / /**

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# General terms and conditions

This Agreement is made on the date shown in Item 1 between the Parties as specified in Item 2.

## 1 Background

1.1 Landgate owns or holds the Intellectual Property Rights in the Location Information Products.

1.2 The Licensee wishes to license the Location Information Products for the Approved Purpose.

1.3 Landgate has agreed to license the Location Information Products to the Licensee on the following terms.

## 2 Definitions

In this Agreement except where the context otherwise indicates:

**Accounts** means books of accounts and records that record all revenue received by the Licensee in connection with this Agreement.

**Agreement** means this document and includes these General Terms and Conditions and the Principal Terms, and any schedule, annexure or other document incorporated by reference into this document.

**Annual Charge** means the total annual amount payable by the Licensee as specified in Item 6.

**Approved Purpose** means the purpose specified in Item 7.

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Australian Prudential Regulatory Authority** means the statutory authority of the Australian Government and the prudential regulator of the Australian financial services industry.

**Business Continuity Plan** means a developed and implemented plan or procedure (including, without limitation, a disaster recovery plan or procedure) to minimise service disruption arising from the occurrence of any event which may materially disrupt or adversely affect the continuity of a business.

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

**Business Hours** means 9:00 am to 5:00 pm on a Business Day.

**Commencement Date** means the date this Agreement takes effect, as specified in Item 3.

**Commonwealth** means the Commonwealth of Australia.

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**Confidential Information** means information that:

(a) is by its nature confidential and in relation to a Party, includes all trade secrets, ideas, know-how, concepts and information whether in writing or otherwise relating in any way to that Party, its agents and employees, its affairs or businesses, and including any such information in the Party's power, possession or control concerning or belonging to any third party;
(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 actual or potential commercial value to Landgate;
    (iii) information relating to internal management, computing operations, personnel, policies, strategies, practices and procedures of Landgate, the Government of the State of Western Australia or the Western Australian Public Sector;
    (iv) information in the Licensee's possession relating to Landgate's customers, clients or suppliers; and
    (v) any information shared between the Parties pursuant to this Agreement, including the terms of this Agreement.

**Consultant** means any person (including employees of that person) who is externally hired by the Licensee and whose access to or use of the Location Information Product must be in accordance with the Consultant Use.

**Consultant Use** means the use of the Location Information Product by a Consultant for a specific project for the Licensee provided that the Consultant:

(a) only uses the Location Information Product for the Licensee's Approved Purpose;
(b) receives no benefit from use of the Location Information Product except the fee paid by the Licensee; and
(c) observes and complies with the terms and conditions of this Agreement (including deleting and removing all of the Location Information Product from its Systems on the finalisation and termination of the consultancy agreement or arrangement between the Licensee and the Consultant).

**Corporations Act** means the *Corporations Act 2001* (Cth).

**CPI** means the Consumer Price Index as advised by the State Department of Treasury and published in the most recent State Budget Paper Number 3, Key Budget Assumptions table Perth Consumer Price Index growth (%), 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 charges made under this Agreement may be reviewed, as specified in Item 13.

**Date of Agreement** means the date specified in Item 1.

**Direct Marketing** means any activity, as determined by Landgate in its sole discretion, which makes it possible to offer goods or services or to transmit other messages to a third party aimed at informing or soliciting a response from the third party, as well as any service ancillary to the same.

**End User** means an entity that has entered into a contract or arrangement with the Licensee or a Sub-VAR to use the Value Added Product for its Internal Business Use only save that an End User may provide the unaltered Value Added Product to its customers where that customer is the final recipient of the Value Added Product.

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**End User Contract** means the minimum standard of agreement or the terms and conditions that must exist between:

(a) the Licensee and its End Users;
(b) a Sub-VAR and its End Users; and
(c) an End User of Value Added Product and its customers

as described in clause 13.2.

**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 lightning strikes, earthquakes, floods, storms, explosions and fires;
(b) national emergencies, acts of war, acts of public enemies, sabotage and revolutions; and
(c) prohibitive governmental legislation, industrial disputes and strikes.

**Further Term** means any period(s) specified in Item 4 and includes any period of extension granted by Landgate under clause 28.

**Further Value Added Reseller Use** means the use of the Value Added Product by Sub-VARs:

(a) to further value add and create or develop further Value Added Products for End Users; and
(b) to provide to End Users in an unaltered format provided the Sub-VAR creates further Value Added Products.

**General Terms and Conditions** means that part of this Agreement entitled “General Terms and Conditions”.

**Government Policy** means any declaration, legislation, statute, policy, code, regulation, guideline, standard, official communication, lawful direction, order, demand or other requirement from Landgate or a government body (excluding the Licensee).

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

**GST Act** means *A 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 or extension of this Agreement, in accordance with clause 28.

**Implied Term** means any implied term, condition, warranty, right or obligation.

**Information Suppression Notice** means a 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 Names Indexes, for reasons of personal safety and security.

**Intellectual Property Rights** means all rights in and to any copyright, trademark, business or trading name, domain name, 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.

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**Internal Business Use** means the use of the Location Information Product or the Value Added Product solely for the internal operation of that party's business. It does not entitle the party to make available or to provide the Location Information Product or the Value Added Product, or any part of the Location Information Product or Value Added Product, to a third party except a Consultant for Consultant Use.

**Item** means the item referred to in the Principal Terms.

**Landgate** means the Party specified in Item 2.

**Licensee** means the Party specified in Item 2.

**Licensee's Application** means the application form completed and submitted by the Licensee to Landgate to become a Value Added Reseller of the Location Information Products.

**Location Information Product** means a collection or compilation of information as specified in Item 8 that is available in the format specified in Item 10 and in the Metadata specified in Item 11.

**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, integration and analysis techniques.

**Names Index** means a list or repository of names contained in the Location Information Product or derived wholly or partly from any information contained in the Location Information Product that enables a search of proprietary information about a person.

**Notice** means a written note (or email) given and effective in accordance with clause 33**.**

**Other Law** means any act, statute, rule or regulation (other than Division 1 of Part 3-2 of the Australian Consumer Law and regulations made in relation to the Australian Consumer Law).

**Parties** means the parties specified in Item 2.

**Principal Terms** means that part of this Agreement entitled "Principal Terms".

**Privacy Legislation** means any applicable privacy legislation including the *Privacy Act 1988* (Cth), the *Privacy Amendment (Notifiable Data Breaches) Act 2017* (Cth) and the *Privacy and Responsible Information Sharing Act 2024* (WA).

**Publicity** means publicity statements or any other form of advertisement, promotion or media release.

**Qualitative Criteria** means the requirements that the Licensee must meet to Landgate's satisfaction before being appointed as a licensee and includes any requirements detailed in an application form or documentation Landgate publishes on its website.

**Register** means the record kept by a party specifying when any Location Information Product or Value Added Product has been accessed, transferred, supplied or licensed and must contain the details specified in Item 14 and any further details requested by Landgate in accordance with clause 15.

**Schedule** means a schedule to this Agreement.

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

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**Special Conditions** means the conditions of this agreement set out in Item 16.

**Standard and Poor's** means Standard and Poor's Financial Services LLC.

**State** means the State of Western Australia.

**Sub-VAR** means an entity that has entered into a contract or arrangement with the Licensee to use the Value Added Product for the following Approved Purpose:

(a) Internal Business Use;
(b) Further Value Added Reseller Use; and
(c) Consultant Use.

**Systems** means any combination of but not limited to hardware, software, software applications, networks and portals used to conduct business.

**Term** means the duration of this Agreement specified or calculated in Item 3, unless terminated earlier or extended in accordance with this Agreement.

**Termination Date** means:

(a) the date specified in Item 3 or if this Agreement is terminated earlier the date of termination, or
(b) if the Parties enter into a Further Term and/or Holding Over Period the latest date of such term,

whichever is the later.

**Territory** means the territory specified in Item 5.

**Value Added Product** means the enhancement/development of the Location Information Product so that it is materially different and not able to be deconstructed back to the Location Information Product and means any use or derivative of or product made or incorporated from the Location Information Products including:

(a) any data output, compilation, creation, development, service or assistance, which incorporates a Location Information Product, in whole or in part; and
(b) the development of a product, application or software solution that enhances, adds value, adds to, manipulates, personalises, interprets or filters a Location Information Product, or parts of the Location Information Product,

as determined by Landgate in its sole discretion.

**Value Added Reseller Use** means the use of the Location Information Product by the Licensee for the lawful preparation, compilation, creation or development of any Value Added Product for Sub-VARs and End Users.

# 3 Interpretation

3.1 In this Agreement, unless the contrary intention appears:

(a) clause numbers refer to those in the General Terms and Conditions;
(b) words in the singular include the plural and vice versa and words denoting a gender include all other genders;
(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;

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(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, corporation, unincorporated body, body corporate, government or statutory body or any other authority or association (incorporated or unincorporated);
  (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; and
  (ix) time is to Western Standard Time, Perth, Western Australia.

# 4 Grant of licence

4.1 Landgate grants the Licensee a non-exclusive, non-transferable licence to use the Location Information Products for the Approved Purpose throughout the Territory and during the Term in accordance with this Agreement.

4.2 The Principal Terms and the General Terms and Conditions are incorporated into and form part of this licence.

# 5 Approved purpose

5.1 The Licensee must only use the Location Information Products for the Approved Purpose.

5.2 The Licensee must not publish, share or provide the Location Information Product to any third party unless permitted under this Agreement or by Landgate in writing.

5.3 The Licensee must ensure that the Licensee's employees, agents, contractors or Consultants who have access to the Location Information Products use the Location Information Products only for an Approved Purpose.

5.4 If the Licensee is in any doubt as to whether a proposed use of the Location Information Product is permitted then the Licensee must contact Landgate to discuss the proposed use or activity.

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# 6 Charges and GST

6.1 The Licensee must pay to Landgate the Annual Charge.

6.2 The Licensee must pay the Annual Charge in four equal instalments, in advance, except that the first instalment will be invoiced by Landgate on commencement of the Term, thereafter Landgate will invoice the Licensee during the month before the commencement of each quarter in each year during the Term.

6.3 The Licensee must pay all invoices issued by Landgate within 30 days of the date of invoice.

6.4 The Licensee acknowledges and agrees that the Annual Charge may change depending on the following:

(a) if the Annual Charge is reviewed in accordance with clause 7
(b) if the Licensee selects additional Location Information Products or deselects Location Information Product; or
(c) if the Licensee engages a Sub-VAR or additional Sub-VARs.

6.5 If the Licensee elects to increase or decrease the number of Location Information Products selected during the Term, the charges will be prorated from the date Landgate provides to the Licensee the Location Information Products as elected by the Licensee. The Licensee's subsequent payments will either be adjusted accordingly, or the Licensee will be invoiced for any additional payments required.

6.6 If Landgate offers further Location Information Products and the Licensee accepts, Landgate reserves the right to vary the charges in its sole discretion.

6.7 If payment to Landgate of any charges is overdue the Licensee must pay to Landgate interest on any overdue amount at a rate equal to 5% above the applicable cash rate as published from time to time by the Reserve Bank of Australia, calculated on a daily and cumulative basis from the payment due date until the date of payment in full.

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

6.9 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.

6.10 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.

6.11 This clause survives termination of this Agreement.

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# 7 Review of charges

7.1 Landgate may review and vary any charges at any time to ensure compliance with its statutory, contractual and any other obligations, including its pricing framework. Should any variation occur, Landgate will endeavour to provide 60 days' notice to the Licensee, with any variation applying to subsequent payment instalments.

7.2 If the Annual Charge has not been increased in the previous 12 months in accordance with clause 7.1 the Annual Charge will:

(a) be reviewed and increased annually on the relevant CPI Review Date;
(b) be increased by the State Department of Treasury's recommended CPI rate, or as otherwise determined by Landgate (acting reasonably) as part of its annual review of charges generally;
(c) not be less than the Annual Charge payable immediately prior to the relevant CPI Review Date; and
(d) be notified to the Licensee by Landgate, without time being of the essence.

# 8 Intellectual Property Rights

8.1 The Licensee only acquires the right to use the Location Information Product in accordance with this Agreement throughout the Territory and during the Term. The Licensee does not acquire any rights of ownership in the Location Information Product.

8.2 Ownership of all Intellectual Property Rights over or in respect of the Location Information Products will at all times remain with Landgate unless otherwise identified (e.g. third party computer program copyright owner).

8.3 Landgate retains the right to license, distribute, market, sell and provide the Location Information Product to any other person on such terms and conditions as Landgate deems fit.

8.4 The Licensee must immediately report to Landgate any known or suspected infringement of Landgate's Intellectual Property Rights over or in respect of the Location Information Product.

8.5 The Licensee must acknowledge that the Value Added Product is derived from Landgate's location information by displaying the copyright notice specified in Item 12 and, comply with any instructions specified in Item 12.

# 9 Access and support

9.1 Landgate will provide access to the Location Information Product as specified in Item 10 unless otherwise notified.

9.2 The Licensee acknowledges that Landgate will not install or test the Location Information Product on the Licensee's Systems.

9.3 The Licensee may contact Landgate during the Term with support queries in connection with this Agreement by contacting service support as specified in Item 2. Landgate cannot however guarantee that it will be able to resolve any issue raised and has no obligation to provide the Licensee with any additional support or training, unless Landgate at its absolute discretion agrees to do so with agreement from the Licensee for a reasonable consultancy charge in accordance with section 16 of the *Land Information Authority Act 2006* (WA).

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9.4 The Licensee acknowledges that Landgate may appoint contractors to assist Landgate in the development, maintenance and improvement of its IT systems. The Licensee agrees that Landgate may disclose to the relevant contractors the terms of this Agreement and any other information (including notices received from the Licensee) reasonably necessary for the contractor to provide the services required by Landgate. The Licensee acknowledges and agrees that such disclosure will not constitute a breach of clause 23.

## 10 Alterations, amendments and updates

10.1 Landgate reserves the right to alter, amend and update the nature and content of the Location Information Product from time to time and will endeavour to notify the Licensee prior to any alteration, amendment, or change to the frequency of updates specified in Item 8, the formats specified in Item 10 or the Metadata specified in Item 11.

10.2 As soon as any alteration, amendment or update is made to the Location Information Product such alteration, amendment or update forms part of the Location Information Product.

10.3 The Parties agree and acknowledge that a variation pursuant to this clause, does not constitute a variation of the Agreement pursuant to clause 34.1.

## 11 Acknowledgement of product limitations

11.1 The Licensee acknowledges and agrees 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 quality or value of the Location Information Product may be subject to matters outside Landgate's control, including a limited capture timeframe, prevailing weather conditions or imagery resolution depending upon the capture device and methodology;
(d) it is fully responsible for obtaining, and for the consequence of using any hardware, computer program, System or any other thing necessary to make use of the Location Information Product; and
(e) it has exercised its independent judgment in acquiring or using the Location Information Product and has not relied on any representation made by Landgate that is not expressly stated in this Agreement or upon any descriptions or illustrations or specifications contained in any document including catalogues or publicity material produced by Landgate.

11.2 The Licensee further acknowledges and agrees that the Location Information Product:

(a) 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 (independently from Landgate);
(b) 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;
(c) may be altered, corrected or have its format, nature and content amended by Landgate from time to time, with any alteration or amendment forming part of the Location Information Product as soon as it is altered or amended; and
(d) 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 or purpose.

11.3 Landgate does not represent or warrant to the Licensee that:

(a) the Location Information Product is accurate, complete, up-to-date, error free or virus free;

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(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) it can guarantee the continued provision of the Location Information Product which may be dependent on the consent and co-operation of third parties;
(e) the Location Information Product will be capable of being processed on any equipment or System of the Licensee; and
(f) it can give any assurances or guarantees in respect of the volume of demand or quantum of any sales that the Licensee may receive or expect to receive (if permitted in accordance with this Agreement) and as such it is the Licensee's sole responsibility for making its own assessment of the potential market.

## 12 Licensee's obligations

12.1 The Licensee must:

(a) comply with all warranties and representations made by the Licensee in respect of the Qualitative Criteria;
(b) set up and maintain an access account, as if Landgate were an End User, and provide Landgate access to the Licensee's product suite utilising the Location Information Product, free of charge, for the purpose of verifying use and compliance by the Licensee with this Agreement;
(c) 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 Privacy Legislation;
(d) not itself, or permit any other person to distribute, sell, transmit, license, 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;
(e) not provide the Location Information Product to any third party other than as expressly provided for in this Agreement or authorised in writing by Landgate;
(f) not copy, reproduce, commercialise, translate, adapt, vary, modify, decompile, disassemble or create derivatives of part or all of the Location Information Product, unless expressly authorised in writing by Landgate or in accordance with this Agreement;
(g) ensure that no alteration is made to the integrity or accuracy of any Location Information Product;
(h) use its best endeavours to ensure that none of its employees, Consultants, Sub-VARS and End-Users cause the Licensee to breach this Agreement;
(i) comply with all State and Commonwealth laws relevant to this Agreement;
(j) ensure that any notices relating to Intellectual Property Rights appearing in or on the Location Information Product or literature relating to them (including notices specified in Item 12), are not altered or removed;
(k) provide all reasonable assistance in any action taken or proposed to be taken by Landgate in enforcing its rights under this Agreement or in respect of its Intellectual Property Rights;
(l) use any supplied Software only in conjunction with the Location Information Product for the Approved Purpose;
(m) not avoid or undermine the charges, and must pay to Landgate the charges and any other monies payable by the Licensee without deduction or set-off;
(n) comply with the terms of this Agreement including any Special Conditions specified in Item 16;
(o) act ethically and in good faith at all times towards Landgate and provide assistance and co-operation as practicable, on request by Landgate (acting reasonably);
(p) not demean, defame or otherwise denigrate Landgate in connection with this Agreement;
(q) not make Location Information Products available to a Consultant unless the Consultant agrees to observe and comply with the terms and conditions of this Agreement, including deleting and removing all of the Location Information Products from its Systems on the finalisation or termination of the consultancy agreement or arrangement between the Licensee and the Consultant;
(r) notify Landgate in writing within 14 days:

(i) if any details approved by Landgate or the Licensee's details in Item 2 change;
(ii) of any information that is or might be relevant to determining whether an actual, potential or perceived conflict of interest exists or might exist in relation to this Agreement or the performance of this Agreement by the Licensee;
(iii) of and provide all information in its possession or under its control in respect of any known or suspected infringement of Landgate's Intellectual Property Rights or any breach of this Agreement, including if caused by an employee, contractor, Consultant or Sub-VAR of the Licensee;
(iv) 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;
(v) of any errors detected in the Location Information Product; and
(vi) of any proposed change in the Licensee's corporate structure, control or ownership, or of a material change to the management that may impact on the Licensee's obligations under this Agreement.

## 13 End user contract

13.1 The Licensee must:

(a) not allow any End User access to any Value Added Product unless the End User has first agreed to and is bound by the terms and conditions of the End User Contract;
(b) take all steps necessary to enforce the End User Contract with any End User (including executing documents and legal proceedings if required); and
(c) if requested by Landgate, promptly provide a copy of the End User Contract to Landgate.

13.2 The Licensee must ensure that the End User Contract includes the following terms and conditions:

(a) the End User must:
(i) only use a Value Added Product for its personal or Internal Business Use; and
(ii) not sell, license, hire, let, trade, expose for sale, or derive revenue from the Value Added Product or part of the Value Added Product, except where an End User is on-providing the Value Added Product, in the same format as received from the Licensee, to the End User's customers;
(b) the End User acknowledges that:
(i) the Value Added Product is derived from Landgate's location information, © (20__) Western Australian Land Information Authority;
(ii) Western Australian Land Information Authority owns all copyright in the location information which is protected by the Copyright Act 1968 (Cth) and apart from any use as permitted under the fair dealing provisions of the Copyright Act 1968 (Cth), all other rights are reserved and no location information, or part of the location information, may be reproduced, distributed, commercialised or re-used for any other purpose without the prior written permission of Western Australian Land Information Authority (Landgate);
(iii) the location information that the Value Added Product is derived from is provided by Landgate in good faith on an "as is" basis and while Landgate has made every effort to ensure the accuracy, reliability, completeness and suitability of the location information, Landgate:
(A) does not give any guarantee or take any responsibility or accept any liability (including liability in negligence) arising from or connected to any errors or omissions in the location information;
(B) accepts no responsibility and disclaims all liability for any losses, damages or costs as a result of the End User's use or reliance on the location information;
(iv) reliance on the location information may only be placed on the original source documents such as the certificate of title and survey plan available from Landgate;

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(v) it must exercise its own skill and care with respect to the use of the location information, and before relying on the location information, the End User must carefully consider its relevance to its purpose and obtain any professional advice appropriate to its particular circumstances;
(vi) areas and dimensions shown in the location information and Value Added Products may be approximate values only and the End User must refer to official registered documents, survey plans, diagrams etc available from Landgate for accurate area, dimensions and other information; and
(vii) the location information that the Value Added Product is derived from may be subject to Privacy Legislation and contractual restriction on its publication and Landgate takes no responsibility for any breach of Privacy Legislation by any person in relation to the location information;

(c) the End User consents to its information being collected and provided to Landgate for audit and inspection purposes.

13.3 The statements contained in clauses13.2(b)(vi) and 13.2(b)(vii) must be displayed in a text box on Value Added Products and not be any less prominent than the text of any other accompanying disclaimers or copyright notices.

## 14 Sub-VAR

14.1 The Licensee may engage a Sub-VAR provided that the appointment of the Sub-VAR has been approved by Landgate.

14.2 The Licensee must promptly provide:

(a) evidence that the Sub-VAR is able to comply with Landgate's Qualitative Criteria;
(b) details as specified in Item 9 of the Principal Terms; and
(c) if requested by Landgate, information regarding the Sub-VAR, including any proposed contractual arrangements between the Licensee and the proposed Sub-VAR, details of the ownership of the Sub-VAR, corporate governance, principal activities, technical capabilities, commercial capabilities and anticipated markets.

14.3 The Licensee must not provide Value Added Products to a Sub-VAR unless the Sub-VAR has been approved by Landgate and the Licensee and the Sub-VAR agree in writing that the Sub-VAR will:

(a) observe and comply with the terms and conditions of this Agreement, as varied from time to time, as if it were named as a Licensee under this Agreement except for:
(i) the requirement to pay the Annual Charge;
(ii) the right to request the engagement of a Sub-VAR; and
(iii) the provisions concerning access to the Location Information Product; and

(b) only use the Value Added Product:
(i) for Further Value Added Reseller Use;
(ii) for Internal Business Use; and
(iii) for Consultant Use.

If requested by Landgate, the Licensee must promptly provide Landgate with a copy of the agreement described above.

14.4 The Licensee acknowledges and agrees that:

(a) the contractual relationship between the Licensee and Sub-VAR does not impose any express or implied legal obligation of any nature whatsoever, in contract or by any other means, on the part of Landgate to the Sub-VAR;
(b) the Licensee remains entirely responsible for the Sub-VAR's acts or omissions under or in connection with this Agreement;

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(c) the Licensee is obliged to ensure that the Sub-VARs have in effect and continue to maintain insurance in accordance with the Licensee's insurance obligations pursuant to this Agreement;
(d) the Licensee remains liable and is not released from its obligations under this Agreement;
(e) the Licensee indemnifies Landgate in full for any loss it suffers, or against any third-party liability it incurs that is caused or contributed to by an act or omission of a Sub-VAR;
(f) the Licensee will not provide the Sub-VAR access to the Location Information Product;
(g) the Licensee will also keep a Register containing details in relation to Sub-VARs pursuant to clause 15; and
(h) Landgate (acting reasonably) may withdraw its consent to any or all of the Licensee's contractual arrangements with Sub-VARs at any time by Notice to the Licensee and the Licensee must terminate the same and ensure that such Sub-VARs:
    (i) are unable to access the Location Information Product comprised in the Value Added Product within 7 days from the Licensee's date of receipt of such Notice; and
    (ii) have withdrawn Landgate's location information from their own Value Added Products within 14 days from the Licensee's date of receipt of such Notice.

14.5 If Landgate withdraws its consent or approval to any Sub-VAR arrangement in accordance with clause 14.4(h) and the Licensee does not withdraw the Sub-VARs' access to the Location Information Products comprised in the Value Added Product within the timeframe specified in clause 14.4(h), Landgate may (acting in its absolute discretion) and without limiting Landgate's other rights under this Agreement immediately by Notice to the Licensee:

(a) terminate this Agreement; and
(b) terminate any other contracts it has with the Licensee.

14.6 The Licensee acknowledges and agrees that neither Landgate or the State of Western Australia will be liable for any damages or loss, for any contracts terminated under this clause.

## 15 Register

15.1 The Licensee must:

(a) keep a Register from the Commencement Date and for a 7 year period after termination of this Agreement;
(b) provide the Register to Landgate for inspection and audit by Landgate within 7 days from receipt of a Notice from Landgate to this effect, during the Term and for a 7 year period after the Termination Date; and
(c) vary the details captured as part of the Register within 30 days from receipt of a Notice from Landgate to this effect if reasonably required by Landgate and provided the details requested are reasonably available.

## 16 Insurance

16.1 The Licensee must effect and maintain, at its sole expense, valid and enforceable insurances on terms acceptable to Landgate with:

(a) an Australian Prudential Regulation Authority approved insurer; or
(b) an overseas insurer with a Standard and Poor's, or any other internationally recognised financial rating agency, with a credit rating of at least A minus (A-); or
(c) an insurer established under the law of either the Commonwealth or a State or Territory of Australia.

16.2 The insurances must be for the Term and cover:

(a) statutory workers compensation insurance specified in Item 15(a);
(b) public and product liability insurance for the minimum amount specified in Item 15(b);



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(c) professional indemnity insurance for the minimum amount specified in Item 15(c) which must be maintained for a period of at least 7 years after termination or expiration of this Agreement (or alternatively 7 year run-off cover obtained by the Licensee); and
(d) any other insurance (for example, cyber security) reasonably required by Landgate.

16.3 The Licensee may disclose this Agreement to its insurer for the purposes of taking out and maintaining the insurances required under this Agreement. Landgate acknowledges and agrees that such disclosure will not constitute a breach of clause 23.

16.4 On request by Landgate, the Licensee must promptly provide Landgate with copies of the certificates of currency of the insurance specified in clause 16.2 and, if requested, a copy of each annual renewal of the Licensee's certificate of currency, on receipt from its insurer.

16.5 Any insurance policy must be in a form that does not allow the insurer to exercise rights of subrogation against Landgate.

16.6 The Licensee must notify Landgate immediately of any cancellation or non-renewal of any insurance policies in connection with this Agreement.

16.7 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 within 60 days from receipt of a Notice from Landgate to this effect.

16.8 Nothing in this clause 16 limits the Licensee's other liabilities under this Agreement or restricts the Licensee from effecting or maintaining any additional insurance or insuring for sums or risks greater than those required under this Agreement.

## 17 Accounts

17.1 The Licensee must:

(a) keep full, proper and up-to-date Accounts in accordance with the Corporations Act or any other applicable statutory or regulatory obligations
(b) retain the Accounts for a period of 7 years after the Termination Date;
(c) allow any person authorised by Landgate to have access to the Accounts and take copies as required;
(d) supply Landgate with the Accounts and related information arising from this Agreement, on request and in the form nominated by Landgate during the Term and, for a period of 7 years after the Termination Date; and
(e) observe, perform and comply with the reasonable requirements of Landgate.

## 18 Audit and inspection

18.1 Landgate, or any person authorised by Landgate, may:

(a) at any time monitor the Licensee's use of the Location Information Products or Value Added Products without notice to the Licensee;
(b) require the Licensee to provide reasonable information or assistance within 7 days from the date of any Notice given to the Licensee by Landgate to determine the Licensee's compliance with this Agreement; and
(c) subject to Landgate providing the Licensee with 14 days' prior Notice audit the Licensee for the sole purpose of examining the Licensee's compliance with this Agreement (including security and financial records) in accordance with Australian auditing or other relevant standards, including, if required, by entering the Licensee's premises during Business Hours and inspecting any records and accounts (and making copies of the same) facilities and Systems that store, record or use the Location Information Product and Value Added Product in order to verify compliance with this Agreement.

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18.2 If an audit or inspection reveals the Licensee, or any use of the Location Information Product or Value Added Product, is not compliant with this Agreement, Landgate may take action, including the immediate suspension or termination of this Agreement, and require the Licensee to remedy the lack of compliance, including by paying Landgate any charges that should have been paid and interest on such charges as if an overdue payment in accordance with clause 6.7.

18.3 If an audit determines that the amount payable to Landgate exceeds the amount actually paid by the Licensee during the period in question by an amount in excess of 5% or more, then the Licensee must also pay the costs and expenses of the audit.

## 19 Security and storage

19.1 The Licensee must:

(a) effect and maintain appropriate levels of security (for example, firewall, anti-virus and anti-malware) and take all reasonable steps that a prudent licensee in a similar situation would take to prevent misuse, unauthorised access, unauthorised alterations, unauthorised downloading, damage and interference to the Location Information Product, Value Added Product and Licensee's Systems;
(b) undertake sufficient maintenance of its computers and Systems including any necessary improvements, to ensure that its level of services and security is compliant with this Agreement;
(c) enter, process and store any Location Information Product in a secure environment in Australia protected from external breach and in a manner that protects its value and prevents it from being accessed, altered or released without permission;
(d) securely store in Australia copies of the Location Information Product as it reasonably requires for backup purposes, provided that all copies retain Landgate's proprietary notice and are secured so no unauthorised access occurs;
(e) ensure that its employees and Consultants are made aware of and agree to comply with the security obligations contained in this Agreement, before providing them with access to any Location Information Product;
(f) ensure that access to the Location Information Product is only provided to current and authorised employees or Consultants on a "need to use" basis and that all access rights and logons to the Location Information Product are immediately revoked when an employee or Consultant ceases to be employed or engaged by the Licensee;
(g) manage access to any Location Information Products by granting, revoking and routinely auditing access accounts;
(h) immediately notify Landgate of any activity that may or does breach the security measures set out in this Agreement; and
(i) permit Landgate, at Landgate's request, to periodically test security of the Licensee's Systems to ensure compliance with this clause to Landgate's reasonable satisfaction.

## 20 Business continuity

20.1 Landgate may develop and implement a Business Continuity Plan coordinating the responsibilities of the Licensee and Landgate.

20.2 The Licensee must provide any reasonable assistance requested by Landgate in relation to Landgate's Business Continuity Plan in connection with the Licensee's obligations under this Agreement.

## 21 Privacy and data breaches

21.1 In respect of the Location Information Product and Value Added Product, the Licensee agrees to:

(a) comply with the requirements of any Privacy Legislation particularly in relation to its handling of personal information and any notifiable information breaches, as defined in the *Privacy and Responsible Information Sharing Act 2024* (WA) whether or not the Licensee is required by law to comply with the Privacy Legislation;
(b) comply with any reasonable direction relating to privacy and data breaches given by Landgate, including Landgate's own privacy policies and procedures and containing, mitigating and remedying a breach or incident; and
(c) not do anything which if done by Landgate would be a breach of the Privacy Legislation.

21.2 Landgate will not be responsible for any actions, claims, costs, proceedings, suits or demands whatsoever arising out of any breach of the Privacy Legislation by the Licensee, its Consultants and Sub-VARs or any other person in relation to any Location Information Product or Value Added Product obtained under this Agreement.

21.3 The Licensee must not use any Location Information Product or Value Added Product for the purpose of Direct Marketing nor release the Location Information Product or Value Added Product to any third party (including any Sub-VAR or End User) where that party proposes to use the Location Information Product or Value Added Product for the purposes of Direct Marketing, or the Licensee suspects that this may occur.

21.4 The Licensee must immediately notify Landgate as soon as it becomes aware of any privacy or data breach or any incident that may give rise to a notifiable information breach or cause serious harm to an individual and, provide details of any action undertaken or to be undertaken to contain, mitigate and remedy the breach or incident.

21.5 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 Value Added Product or contravention of the Privacy Legislation including promptly:

(a) conducting an investigation as requested by Landgate;
(b) providing a report of the outcome of the investigation to Landgate; and
(c) containing, mitigating and remedying the breach or incident.

21.6 This clause will survive termination of this Agreement.

## 22 Publicity

22.1 The Licensee agrees to only release Publicity that specifically refers to Landgate or Location Information Products if such Publicity has been approved in writing (not to be unreasonably withheld) by Landgate prior to its release. The Licensee must provide the Publicity to Landgate at least 2 Business Days prior to its intended release.

22.2 The Licensee must advise Landgate of any media report being published in relation to Landgate or Location Information Products at least 2 Business Days prior to such publication.

SAMPLE

22.3 The Licensee must not permit commercial filming or recording in connection with Landgate, without Landgate's prior written approval.

# 23 Confidentiality

23.1 The parties must not disclose Confidential Information except as permitted by this Agreement.

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 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, 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;
(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; and
(e) was in the receiving Party's possession prior to disclosure to it by the other Party.

23.4 This clause will survive termination of this Agreement.

# 24 Suppression of information

24.1 Landgate may at any time give the Licensee an Information Suppression Notice.

24.2 An Information Suppression Notice must be in writing and advise of the information that must be suppressed.

24.3 If the Licensee is able to search the Licensee's System by a person's name, the Licensee must from the time of receipt of an Information Suppression Notice, delete the information that must be suppressed from all Names Indexes in the Licensee's possession or under its control, including any stored for backup or archival purposes except where the Licensee is required to disclose Names Indexes stored for backup or archival purposes in order to comply with legislative requirements under the *Mining Act 1978* (WA).

24.4 The Licensee must from the time of receipt of an Information Suppression Notice, take all reasonable steps to ensure that Consultants, Sub-VARs and End Users do not have access to, any Names Indexes containing information that must be suppressed pursuant to an Information Suppression Notice.

24.5 Landgate acknowledges that the Licensee's Systems may not immediately update Names Indexes following a manual input of changes. The Licensee must use its best efforts to ensure that information is suppressed in its Systems as soon as possible and no later than 3 Business Days from receipt of an Information Suppression Notice.

24.6 The Licensee must provide Landgate with a Notice, certifying that clauses 24.3 and 24.4 have been complied with within 5 Business Days from receipt of an Information Suppression Notice.

24.7 The Licensee must ensure that the Licensee and its employees do not use or disclose the information that must be suppressed except where the Licensee is required to use or disclose it in order to comply with legislative requirements under the *Mining Act 1978* (WA).

SAMPLE

## 25 Australian Consumer Law

25.1 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.

25.2 Pursuant to section 64A of the Australian Consumer Law, this clause 25.2 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 sections 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 Landgate's option;
   (i) the supply of the services again; or
   (ii) the payment of the cost of having the services supplied again.

25.3 This clause 25.3 applies where Other Law implies in this Agreement any 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 25.2(a) or 25.2(b) above**.**

25.4 This clause will survive termination of this Agreement.

## 26 Limitation of liability

26.1 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.

26.2 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.

26.3 This clause will survive termination of this Agreement.

## 27 Release and indemnity

27.1 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, except to the extent such loss is caused by Landgate's negligence, fraud, unlawful act or omission, or breach of this Agreement.

SAMPLE

27.2 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 and any legal costs, charges and expenses, arising from:

(a) the Licensee's or any third party's use or reliance on the Location Information Product to 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, Sub-VAR, Consultant or End User arising in relation to this Agreement;
(c) any breach of this Agreement by the Licensee, Sub-VAR, Consultant or End User;
(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; and
(f) any unauthorised use of Landgate's Systems or the Location Information Products,

except to the extent such loss is caused by Landgate's negligence, fraud, unlawful act or omission, or breach of this Agreement.

27.3 This clause will survive termination of this Agreement.

## 28 Further term and holding over period

28.1 The Licensee may seek to extend this Agreement for the term set out in Item 4, by Notice to Landgate at least 1 month prior to the expiration of the Term, provided:

(a) the Licensee is not in breach of any terms and conditions of this Agreement;
(b) Landgate, in its absolute discretion, agrees to that request; and
(c) the Licensee delivers any signed documentation required by Landgate before the expiration of the Term.

28.2 If Landgate consents to the Further Term, the renewed agreement:

(a) commences on the day after the expiration of the Term;
(b) will include any increase in the Annual Charge, in accordance with this Agreement; and
(c) is otherwise on the same terms and conditions of this Agreement, except for any periods of extension granted by Landgate under this clause.

28.3 Subject to Landgate's written consent, if:

(a) the Agreement is not formally renewed or extended at the expiry of the Term for the Further Term or otherwise; and
(b) the Licensee is not in arrears and continues to pay any charges required under this Agreement,

this Agreement will continue in operation in all respects after the expiration of the Term on the same terms during the Holding Over Period including:

(i) the Annual Charge will be payable quarterly in advance on a pro rata basis; and
(ii) the Annual Charge may be increased in accordance with clause 7;

save that either Party may terminate this Agreement at any time by providing not less than 30 days' Notice to the other Party (unless termination is permitted with lesser or no Notice under clause 29).

28.4 If this Agreement is not renewed or extended for a Further Term or Holding Over Period, this Agreement will cease at the expiration of the Term or sooner if terminated earlier.

SAMPLE

# 29 Default and termination

29.1 The Licensee may terminate this Agreement by giving Landgate at least 30 days' Notice of termination.

29.2 Landgate may, in its absolute discretion, immediately without notice suspend its obligations to the Licensee or terminate this Agreement immediately by Notice to the Licensee if:

(a) the Licensee commits a breach of any term of this Agreement and has not remedied the breach to the reasonable satisfaction of Landgate (if capable of remedy) within 14 days of receiving Notice from Landgate requesting that the breach be remedied;
(b) the Licensee fails to follow, meet or comply with any warranties and representations made in respect of the Qualitative Criteria;
(c) the Licensee is wound up, becomes insolvent or has a liquidator, provisional liquidator, administrator, receiver, manager or receiver and manager appointed;
(d) the Licensee fails to comply with clauses 5, 19, 21, 23, or 24;
(e) the Licensee commits a fraudulent act against Landgate;
(f) the Licensee has been guilty of misrepresentation in its dealings with Landgate;
(g) the Licensee ceases or threatens to cease conducting its business in the normal manner;
(h) the Licensee provides or uses the Location Information Product in a manner that avoids or undermines this Agreement generally;
(i) the Licensee fails to comply with a change to this Agreement as a result of a change to Government Policy within the timeframe specified in clause 34.3;
(j) the continued provision of the Location Information Product will result in a breach of Government Policy or any ruling or decision of a court, tribunal or other statutory body;
(k) the Licensee acquires, directly or indirectly, an interest in a Sub-VAR, another licensee, former Sub-VAR or former licensee of Landgate; or
(l) Landgate is unable for any reason to continue providing the Location Information Product, given that supply may be dependent upon the co-operation of third parties.

29.3 Landgate may, in the event of any default by the Licensee, in addition to any other remedy provided in this Agreement or at law:

(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 in accordance with clause 6.7;
(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.

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

(a) within 7 days of receiving an invoice from Landgate, to pay 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.

29.5 The Licensee may terminate this Agreement immediately by Notice to Landgate if:

(a) Landgate commits a material breach of this Agreement and does not remedy the breach (if capable of remedy) within 14 days of receiving a Notice from the Licensee requesting that the breach be remedied; or
(b) Landgate:
    (i) ceases or takes steps to cease conduct of its business in the normal manner; or
    (ii) is wound up, becomes insolvent or has a liquidator, provisional liquidator, administrator, receiver, manager or receiver and manager appointed.

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## 30 Obligations when agreement ends

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

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

(a) pay Landgate all charges that are owing;
(b) cease to use all Location Information Products including as contained in whole or in part in any Value Added Products;
(c) to the extent that it is able, delete and expunge, or arrange for the deletion of, any Location Information Products obtained from Landgate, including the deletion or return, of all copies of any Location Information Products able to be disaggregated from its Systems and records (in whatever form or medium held);
(d) to the extent that it is able, return to Landgate, or delete and expunge, all of Landgate's Confidential Information and intellectual property;
(e) maintain the security and confidentiality of all of Landgate's Confidential Information; and
(f) 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.

30.3 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.

30.4 The Licensee must provide Landgate with a Notice, within 14 days of the Termination Date certifying that clauses 30.2(b), 30.2(c) and 30.2(d) have been complied with.

30.5 The Licensee must permit Landgate or any person authorised by Landgate to inspect and audit the Licensee to ensure compliance with this clause and this Agreement.

30.6 This clause will survive termination of this Agreement.

## 31 Force Majeure

31.1 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 that Party notifies the other Party as soon as it believes a Force Majeure Event has occurred.

31.2 If a failure or delay in performance due to a Force Majeure Event exceeds 60 days and renders performance of this Agreement impossible, either Party may terminate this Agreement by Notice to the other Party.

31.3 If this Agreement is terminated due to a Force Majeure Event, the obligations in clause 30 remain as applicable in the circumstances of the Force Majeure Event.

## 32 Dispute resolution

32.1 Before resorting to external dispute resolution mechanisms, the Parties agree to comply with the dispute resolution process set out in this clause.

32.2 Either Party may give the other Party a Notice of a dispute in relation to this Agreement. The Notice must set out the nature of the dispute, the proposed claim and resolution of the dispute.

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32.3 On receipt of the Notice referred to in clause 32.2, the Parties must attempt to settle by negotiation in good faith the dispute and where practicable, each Party will refer the matter to personnel who have authority to intervene and direct some form of resolution.

32.4 If the Parties are unable to resolve the dispute within 10 Business Days from receipt of the Notice of dispute, either Party may refer the dispute for mediation. The mediation will be conducted by a single mediator who is to be appointed by agreement between the Parties within 10 Business Days from either Party referring the dispute for mediation or failing which by the President of the Law Society of Western Australia on request by either Party.

32.5 The mediation process will be as follows:

(a) the mediation is to be held in Perth unless the Parties otherwise agree in writing to attend using online/virtual technology;
(b) the mediation is to be attended by the Parties without representation by legal practitioners unless the Parties otherwise agree in writing;
(c) the mediator will determine the process for mediation; and
(d) the costs of the mediation will be shared equally by the Parties.

32.6 If the dispute remains unresolved after mediation or within 60 days of the date of the Notice referred to in clause 32.2, whichever is the later, either Party may then have recourse to the courts.

## 33 Notices

33.1 Any Notice given under this Agreement must:

(a) be in writing and signed by the sender or a person duly authorised by the sender;
(b) be addressed to the intended recipient at the address or email address specified in Item 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); and
    (iii) for e-mail, when the email enters the recipient's email server and appears in the recipient's inbox.

## 34 Variation

34.1 Subject to this clause, this Agreement may only be varied by agreement in writing signed by both Parties.

34.2 The Licensee acknowledges that this Agreement is subject to Government Policy and Landgate has the right to unilaterally vary this Agreement by Notice to the Licensee in the event of a change in Government Policy that may require a change to the terms and conditions of this Agreement.

34.3 In the event of a change in Government Policy, the Licensee will be provided with reasonable time to review and implement any changes required where possible, with the extent of reasonable time varying from 14 to 60 days, depending on the immediacy required and substantiality of any change.

34.4 The Parties acknowledge that if the variation notified to the Licensee as a result of a change in Government Policy prevents the Licensee from using the Location Information Product in the manner authorised under this Agreement or it is not possible for the Licensee to implement the changes required as provided under clause 34.3, the Licensee has the right to terminate this Agreement by Notice to Landgate.

## 35 Assignment

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35.1 Other than as expressly provided for in this Agreement, the Licensee must not assign, transfer, novate, sub-license or otherwise deal with its rights, benefits or obligations under this Agreement, unless it has first obtained the written consent of Landgate which may be withheld in its absolute discretion.

35.2 If the Licensee is an entity (other than a public company as defined in the Corporations Act), the Licensee is deemed to have assigned this Agreement if:

(a) anything occurs, the effect of which transfers or is to transfer, directly or indirectly, the management or control of the Licensee (or an entity that controls the Licensee) to another person; or
(b) there is any change in control of the Licensee within the meaning of the Corporations Act or any applicable legislation governing the Licensee.

35.3 Landgate may assign, transfer, novate, sub-license or otherwise deal with its rights, benefits or obligations under this Agreement. In order to comply with its obligations under this Agreement and this clause, Landgate may disclose the terms of this Agreement to its contractors and other third parties. The Licensee acknowledges and agrees that such disclosure will not constitute a breach of clause 23. The Licensee further acknowledges and agrees to any variations reasonably requested by Landgate if Landgate wishes to novate this Agreement.

## 36 General terms

36.1 The Licensee must do all things and sign all documents necessary to give effect to the provisions of this Agreement.

36.2 The Licensee irrevocably authorises Landgate to complete any blanks in the Principal Terms section of this Agreement, including the Date of Agreement and the details in Item 3, after the execution of this Agreement by the Licensee and the Licensee acknowledges and agrees that the completion of any blanks by Landgate does not constitute a variation of this Agreement under clause 34.1.

36.3 If there is any inconsistency in this Agreement, the Principal Terms will take precedence over any other term of this Agreement, to the extent of the inconsistency.

36.4 This Agreement constitutes the entire agreement between the Parties and supersedes any previous agreements or representations, written or oral.

36.5 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.

36.6 A Party may exercise any right at its discretion, and separately or concurrently with any other 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.

36.7 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.

36.8 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.

36.9 If any provision of this Agreement becomes invalid, illegal or unenforceable for any reason, this Agreement will remain otherwise in full force apart from such provision which will be deemed deleted or the provision will be read down to the extent reasonable to make it valid and enforceable, at Landgate's election.

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36.10 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.

36.11 This Agreement may be executed and delivered in one or more counterparts, all of which together will constitute one document. This Agreement when executed by a Party may be delivered by email or other electronic means to the other Party and such delivery of the executed Agreement will be valid and binding for all purposes without the delivery of an original signature being thereafter required.

36.12 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.

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