

# Transaction Licence (161215)



By accessing, using or downloading this product or service (Location Information Product), you agree to be bound by the following terms and conditions that form a legal agreement between the Western Australian Land Information Authority, a body corporate established by the *Land Information Authority Act 2006*, ABN 86 574 858 (Landgate) and you (Licensee).

## 1 Grant of Licence:

- 1.1 This is a non-exclusive, non-transferable, revocable licence between Landgate and you, the Licensee (including your employees and consultants), to use the Location Information Product for Internal Business Use only, unless otherwise agreed in writing by Landgate who may refuse in its absolute discretion.
- 1.2 Internal Business Use is use of the Location Information Product solely for personal use or the use for internal administration and operation of the Licensee's business and does not entitle the Licensee to make available or to provide the Location Information Product to any third party outside the business.

## 2 Consultant Use

- 2.1 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 Internal Business 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 document as if they were a party to it; (iv) deletes and removes all the Location Information Product from its systems upon the finalisation or termination of the consultancy; and (v) if required by Landgate, enters into a confidentiality deed in the form prescribed by Landgate.
- 2.2 Where the consultant is the Licensee engaged by a client under a contract for service and the Location Information Product is required as part of the consultancy, the Licensee (as a consultant) may disclose the Location Information Product to the client, provided: (i) the client only uses the Location Information Product for their Internal Business Use and is otherwise bound by the terms of this document; and (ii) the Licensee (as a consultant) only uses the Location Information Product for the one client and if required by another client, the consultant must enter into another agreement with Landgate.

## 3 Fee

- 3.1 The Licensee is not entitled to access, use or download the Location Information Product until the fee, as notified on the Landgate website from time to time, has been paid. In the case of payment by cheque, payment will not be deemed until the cheque has been cleared.
- 3.2 Any fee excludes GST and other taxes unless expressly stated otherwise.
- 3.3 Landgate reserves the right to increase any fee in accordance with a price review or CPI at the end of the financial year.

## 4 Term of Licence

- 4.1 This agreement commences upon payment of the fee or access is granted to the Location Information Product, whichever occurs first and is granted for the subscribed period only, but may be terminated immediately by Landgate in the following circumstances:
  - (a) if the Licensee is in breach of any term of this document and has not remedied the breach within 7 days of being notified;
  - (b) if the Licensee is wound up, dissolved, becomes insolvent or has a liquidator, provisional liquidator, administrator, receiver, manager or receiver and manager appointed;
  - (c) if the Licensee fails to comply with **clauses 5 or 6** of this document;
  - (d) if the Licensee alters or destroys the integrity of the Location Information Product for any reason; or
  - (e) if the licensee's consultant is in breach of any term of its confidentiality agreement with Landgate.
- 4.2 Upon termination, the Licensee's access will cease and the Licensee must:
  - (a) pay any fee outstanding as if a liquidated debt;
  - (b) delete and expunge any remaining copies of the Location Information Product or otherwise return or dispose of such material in the manner directed by Landgate;
  - (c) if required, provide to Landgate a written certification specifying that paragraph (b) has been complied with; and
  - (d) permit Landgate to inspect its systems and records for compliance purposes on receiving 24 hours notice.
- 4.3 The Licensee may continue to keep one secure copy of the Location Information Product for archiving, statutory and indemnity purposes if notified by Landgate, but may not further use or distribute the Location Information Product.
- 4.4 Termination will not affect any rights or remedies which Landgate may have otherwise under this document or at law.

## 5 Intellectual Property

- 5.1 Title and all copyright and intellectual property rights over and in respect of the Location Information Product are owned by Landgate and the Licensee only acquires the right to access or use the Location Information Product.

## 6 Licensee's Obligations

- 6.1 The Licensee agrees to:
  - (a) not copy, reproduce, distribute, commercialise, translate, adapt, vary, modify, decompile, disassemble or create derivatives of part or all of the Location Information Product, unless in accordance with this document or with the express written consent of Landgate;
  - (b) not, during, or any time after the expiry or termination of this document, permit any act which infringes the intellectual property rights of Landgate and to promptly notify Landgate of any suspected or alleged infringement of intellectual property rights that relate to the Location Information Product;
  - (c) not remove or tamper with any copyright or similar proprietary notice, or any rights management information attached to or incorporated in the Location Information Product or any copies of the Location Information Product;
  - (d) not sell, rent, lease, sub-licence, assign or transfer all or part of the Location Information Product to any third party;
  - (e) supervise and control the access and use of the Location Information Product, including use by its employees or contractors in accordance with the terms of this document;
  - (f) keep and maintain adequate security measures to ensure that the Location Information Product is not used or accessed by anyone not entitled by this document to use or have access;
  - (g) remain responsible and liable for any third party that uses the Licensee's access or the Location Information Product if made available to the third party under this document;
  - (h) not use the Location Information Product for or in connection with direct marketing including but not limited to offering goods or services or transmitting 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 any person, organisation or segment of the population, as well as any service ancillary thereto;
  - (i) use any supplied software only in conjunction with the Location Information Product;
  - (j) not use the Location Information Product for any unlawful purpose;

- (k) comply with any reasonable directions of Landgate in relation to use of the Location Information Product;
- (l) comply with all relevant regulations, restrictions and conditions imposed by any legislation including the requirements of the Privacy Act 1988 (Cth); and
- (m) provide Landgate upon request with a copy of anything developed from or incorporating any part of the Location Information Product.

## 7 Disclaimer and Liability

- 7.1 The Location Information Product 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.
- 7.2 While Landgate uses reasonable endeavours to ensure the accuracy, correctness and reliability of the Location Information Product, it 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.
- 7.3 The Location Information Product has been acquired and/or compiled from various data sources and is recorded and stored at different levels of reliability and may become erroneous over time. 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 in accordance with capture device and methodology. The Licensee must ensure that Landgate will not be liable for any loss, damage or injury suffered by the Licensee or by any other person consequent upon use of or reliance on the Location Information Product or upon the existence of any errors in the Location Information Product and the Licensee further acknowledges that the existence of any such errors shall not constitute a breach of this document.
- 7.4 The Licensee acknowledges that it has exercised its independent judgment in acquiring or using the Location Information Product and has not relied on any representation made by Landgate which has not been stated expressly in this document or upon any descriptions or illustrations or specifications contained in any document including catalogues or publicity material produced by Landgate.
- 7.5 To the extent permitted by law, except in the case of wilful fraud or misconduct by Landgate, Landgate will in no way be liable to the Licensee or anyone else for any loss or damage, however caused (including through negligence) which may be directly or indirectly suffered in connection with the use of the Location Information Product. This general disclaimer is not restricted or modified by any of the following terms.
- 7.6 To the extent permitted by law, Landgate will not be liable for any indirect or consequential damages arising out of a breach of this document or arising out of the supply of any defective Location Information Product.
- 7.7 Pursuant to section 64A of the Australian Consumer Law, this clause applies in respect of any of the goods or services supplied under this document 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 Landgate's option:
    - (i) the supply of the services again; or
    - (ii) the payment of the cost of having the services supplied again.
- 7.8 This clause 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 document 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 7.4(a) or 7.4(b)** above.

## 8 Indemnity

- 8.1 The Licensee shall indemnify and keep indemnified Landgate and its officers, employees and agents in respect of:
- (a) all claims, demands, actions, suits and damages for loss, damage or injury (including indirect or consequential loss) suffered by the Licensee or any other person resulting from the use of or reliance on the Location Information Product or any part thereof (unless such loss arises as a direct result of Landgate's deliberate fraud or wilful misconduct or a breach of this document by Landgate) whether or not any such reliance is notified to Landgate by the Licensee;
  - (b) all breaches of Landgate's intellectual property rights by the Licensee or any third party to whom the Licensee provided access either deliberately or inadvertently to the Location Information Product; and
  - (c) any legal costs, charges and expenses arising from actions against the Licensee or any third party.

## 9 Support

- 9.1 During the subscribed period, the Licensee may contact Landgate with support queries. However, Landgate cannot guarantee that it will be able to resolve any issue raised and has no obligation to provide the Licensee with any additional support, unless Landgate agrees to do so with agreement from the Licensee for a reasonable additional fee at Landgate's consultancy rates.

## 10 General Terms

- 10.1 The benefit of this document must not be dealt with in any way by the Licensee (whether by assignment, sub-licensing or otherwise) without Landgate's prior written consent which may be withheld in its absolute discretion.
- 10.2 Failure or neglect by either party to enforce at any time any of the provisions of this document shall not be construed or deemed to be a waiver of that party's rights under this document.
- 10.3 This document (including any additional terms set out in the Location Information Product or notified to you by Landgate) constitutes the entire agreement between the Licensee and Landgate and supersedes any prior representations, warranties, understandings or agreements that relate to the same subject matter.
- 10.4 If any provisions of this document become invalid, illegal or unenforceable for any reason, this document shall remain in full force apart from such provision which shall be deemed deleted or read down to the extent reasonable to make this document valid.
- 10.5 This document shall be governed by and construed according to the law of Western Australia.

**For any licensing queries contact: Pricing & Licensing - Product Performance**  
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