



Distributor Agreement

Version: 200219

Agreement number: TBA

Between

Western Australian Land Information Authority (Landgate)

And

Customer Name (Licensee)

Prepared by: Commercialisation & Partnerships, Landgate

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SCHEDULE EXECUTION

PARTIES

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

BACKGROUND

- A. Landgate is the owner of the Intellectual Property in the Location Information Product.
- B. The Distributor wants to undertake the distribution and supply of the Location Information Product.
- C. To develop the market of the Location Information Product, Landgate wants to engage the Distributor to distribute the Location Information Product to third parties, subject to the terms and conditions contained in this Agreement.

AGREED TERMS

1 Appointment

- 1.1 Landgate grants to the Distributor a non-exclusive and non-transferable licence to market, distribute and supply the Location Information Product to a third party for the Approved Purpose only, during the Term and on the terms and conditions of this Agreement.

2 Fees and Charges

- 2.1 The Distributor must pay Landgate:
 - (a) the charge per Location Information Product at the rate and in the manner specified in **Item 12**, every time the product or part thereof is supplied, provided or given to a customer, third party or end user.
 - (b) any fees and charges as specified in **Item 12**;
 - (c) all taxes, duties and charges arising out of, incidental to or levied in respect of this Agreement, the Location Information Product or any goods or services supplied pursuant to this Agreement.
- 2.2 The Distributor acknowledges that it must be registered for GST at the Commencement Date and the Distributor will notify Landgate if it ceases to be registered for GST.
- 2.3 The Distributor must maintain a Register of information and provide this Register to Landgate within 14 days of the due date as specified in **Item 13**.
- 2.4 Within 30 days of receipt of the Register, Landgate will calculate and provide the Distributor an invoice for the fees and charges owing and the Distributor must pay the invoice within 30 days of receipt of any invoice from Landgate.
- 2.5 Failure by the Distributor to provide Landgate the Register or pay the invoice by the due date will result in Landgate applying penalty interest. The penalty interest rate will be a rate equal to 2% per cent above the applicable base lending rate of the Commonwealth Bank of Australia, as determined by Landgate and calculated on a daily and cumulative basis. This will be charged from the last date the Distributor should have provided the Register to Landgate or from the invoice due date and until payment has been received in full.
- 2.6 All payments to be made by the Distributor are calculated without regard to GST, unless stated otherwise. The Distributor must pay Landgate (at the same time and in the same manner as the Distributor 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.

3 Review of Fees and Charges

- 3.1 Landgate may vary any of the fees and charges specified in this Agreement.
- 3.2 All fees and charges will:
- (a) be reviewed and increased on the relevant CPI Review Date;
 - (b) be increased by a factor equal to the percentage increase in the annual CPI in the 12 month period preceding the relevant CPI Review Date; and
 - (c) not be less than the fees and charges payable immediately prior to the relevant CPI Review Date.
- 3.3 Landgate will use its best endeavours to provide at least 30 days' notice of any variation to the fees and charges.

4 Delivery and Storage

- 4.1 Landgate shall deliver the Location Information Product to the Distributor at the site nominated by the Distributor within 30 days of execution of this Agreement, unless an alternative arrangement has been agreed.

The Distributor shall securely store the Location Information Product securely on the Distributor's equipment.

5 Distributor's Obligations

- 5.1 The Distributor must:
- (a) use its best efforts to promote the supply and expand the market for the Location Information Product and provide its customers and end users adequate support;
 - (b) ensure that all copies of the Location Information Product in its possession or control retain such copyright notice as is furnished by Landgate to the Distributor from time to time;
 - (c) not itself or permit any other person to, distribute, sell, transmit, licence, hire, let, trade or expose for sale any Location Information Product, other than as expressly provided for in this Agreement;
 - (d) always act ethically in connection with this Agreement and in accordance with good corporate governance practices;
 - (e) act in good faith at all times towards Landgate and provide assistance and co-operation as practicable, on request by Landgate;
 - (f) not demean, defame or otherwise denigrate Landgate;
 - (g) comply with all State and Commonwealth laws relevant to this Agreement;
 - (h) use its best endeavours to ensure that none of its employees, consultants or clients, cause the Distributor to breach this Agreement;
 - (i) notify Landgate if any of the details in **Item 2** changes;
 - (j) ensure that any notices relating to Intellectual Property Rights appearing in or on the Location Information Products or literature relating to them, are not altered or removed.
 - (k) at its own cost, comply with all regulations, restrictions and conditions imposed by any legislation with respect to the use of, access to, storage of or dealing with the Location Information Product, including but not limited to privacy legislation;

6 Landgate's Obligations

- 6.1 Landgate must:
- (a) provide the Distributor with information regarding the Location Information Product;
 - (b) provide the Distributor with updates to the Location Information Product as specified in **Item 8**, that will, if applicable, immediately on their provision form part of the Location Information Product; and

- (c) act in good faith at all times to the Distributor and provide such assistance and co-operation as the Distributor reasonably requests.

7 Warranties

- 7.1 Landgate warrants that the Location Information Product does not infringe any Intellectual Property Rights of a third party and that it has the authority to enter into this Agreement with the Distributor.
- 7.2 Landgate shall promptly rectify or, if necessary, replace the Location Information Product, at its own option and at its own expense, if it is found to be defective within 90 days of supply to a customer.
- 7.3 All products distributed by the Distributor must display the following words clearly:

“Important Notice:

If any person is acquiring “goods or services” from us in the course of our business and that person is a “consumer” for the purposes of, and as defined by section 3 of the *Australian Consumer Law*, then the following condition applies to the exclusion of any other contrary term or condition of the supply:

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

Warranty Period:

Defects must appear within 90 days from date of purchase. Claims must be made no later than 7 days after the expiry of the warranty period.

Please forward all warranty claims to **[Name and contact details of Distributor]**.

If goods that have been supplied are found to be defective or are not of an acceptable quality, **[Name of Distributor]** will pay your reasonable costs of claiming under the warranty and any reasonable expenses incurred in making the claim.

The benefits of any warranty given by **[Name of Distributor]** are in addition to other rights you may have under law relating to the supply of the goods or services to which the warranty relates.”

- 7.4 If the Distributor is acquiring “goods or services” from Landgate in the course of Landgate’s business and the Distributor is a “consumer” for the purposes of, and as defined by section 3 of the *Australian Consumer Law*, the statutory warranty set out in **clause 7.3** also applies *mutatis mutandis* to this agreement to the exclusion of any other contrary term or condition of this agreement.
- 7.5 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.
- 7.6 Pursuant to section 64A of the Australian Consumer Law, this **clause 7.6** applies in respect of any of the goods or services supplied under this Agreement which are not of a kind ordinarily acquired for personal, domestic or household use or consumption. To the extent permitted by law, Landgate’s liability for failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the Australian Consumer Law, other than a guarantee under section 51, 52 or 53 of the Australian Consumer Law, is hereby limited to:
- (a) in the case of goods, at Landgate’s option, any one or more of the following:
- (i) the replacement of the goods or the supply of an equivalent product;
 - (ii) the repair of the goods;

- (iii) the payment of the cost of replacing the goods or of acquiring an equivalent product; or
- (iv) the payment of the cost of having the goods repaired; or
- (b) in the case of services, at the Landgate's option;
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

7.7 This **clause 7.7** applies where any act, statute, rule or regulation (other than Division 1 of Part 3-2 of the Australian Consumer Law and regulations made in relation thereto) ("**other law**") implies in this Agreement any term, condition, warranty, right or obligation ("**implied term**"), and the other law avoids or prohibits a provision in a contract excluding or modifying the application of, exercise of or liability under such implied term. To the extent permitted by law, the liability of Landgate for any breach by it of such implied term is limited, at Landgate's option, to any one or more of the remedies referred to in **clauses 7.6(a)** or **7.6(b)** above.

7.8 This clause will survive termination of this Agreement.

8 Intellectual Property Rights

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

'© 20__ Western Australian Land Information Authority'

9 Insurance

- 9.1 The Distributor must effect and maintain, at its sole expense, valid and enforceable insurance with a reputable and solvent Australian Prudential Regulation Authority approved insurer carrying on business in Australia for the Term covering:
 - (a) all statutory workers compensation insurance;
 - (b) product and public liability insurance for the minimum amount per claim specified in **Item 15(a)**; and
 - (c) professional indemnity insurance covering a Distributor's liability arising out of any act, neglect, error or omission made or done by or on behalf of the Distributor, its officers, employees, agents, members, customers, clients or consultants in connection with this Agreement for the minimum amount per claim specified in **Item 15(b)**.
- 9.2 On request by Landgate, the Distributor must verify that the Distributor has the insurance required under this Agreement by providing a certificate of currency.
- 9.3 Any insurance policy must be in a form that does not allow the insurer to exercise rights of subrogation against Landgate.
- 9.4 The Distributor must notify Landgate immediately of any cancellation or non-renewal of any insurance policies in connection with this Agreement.

- 9.5 Where Landgate reasonably considers that additional insurance or increased limits to existing insurance may be necessary, the Distributor must obtain such additional insurance or increase its limits as required.

10 Confidentiality

- 10.1 The parties must not disclose Confidential Information except in the circumstances of this clause.
- 10.2 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.
- 10.3 The Distributor must on demand return to Landgate any documents or information supplied by Landgate to the Distributor in connection with this Agreement.
- 10.4 Each party must hold the other party's Confidential Information secure and in confidence, except for such Confidential Information which the disclosing party can demonstrate:
- (a) is required to be disclosed according to the requirements of any law, stock exchange, judicial body or government agency;
 - (b) is or has generally become available to the public without breach of this Agreement;
 - (c) was approved for release in writing by the other party, but only to the extent of and subject to such conditions as may be imposed in such written authorisation; and
 - (d) is required to be disclosed to a Western Australian government Minister, the Western Australian Parliament or any committee or sub-committee of the Western Australian Parliament (where Landgate is the disclosing Party).
- 10.5 This clause will survive termination of this Agreement.

11 Indemnity

- 11.1 The Distributor must indemnify (and keep indemnified) Landgate, its board members, employees, contractors and agents in respect of all claims, demands, actions, suits and damages for loss, damage or injury (including indirect or consequential loss) resulting from:
- (a) the Distributor's or any person's use or reliance on the Location Information Product whether or not any such reliance is notified to Landgate;
 - (b) any acts of the Distributor, including any unlawful or wilfully wrong act or omission;
 - (c) any breach of this Agreement and any tort or negligence by the Distributor or any consultant in connection with this Agreement;
 - (d) all breaches of Intellectual Property Rights by the Distributor or any third party to whom the Distributor provided access either deliberately or inadvertently; and
 - (e) any legal costs, charges and expenses arising in respect of paragraphs (a) – (d) above, except to the extent such loss is caused by Landgate's negligence or breach of this Agreement.
- 11.2 The Distributor agrees to:
- (a) notify Landgate of and to provide all information in its possession or under its control in respect of any infringement of Landgate's Intellectual Property Rights;
 - (b) provide all reasonable assistance in any action taken or proposed to be taken by Landgate in enforcing its rights under this Agreement; and
 - (c) promptly advise Landgate in writing of any actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, charges and expenses which may be brought, claimed or threatened against the Distributor or Landgate in respect of or relating to the Location Information Product.
- 11.3 This clause will survive termination of this Agreement.

12 Liability of Landgate

- 12.1 Landgate shall be under no liability to the Distributor in respect of any consequential loss or damage which may be suffered or incurred or which may arise directly or indirectly in respect of goods or services supplied pursuant to this Agreement or in respect of a failure or omission on the part of Landgate to comply with its obligations under this Agreement.
- 12.2 Subject to **clause 12.3**, The Distributor warrants that it has not relied on any representation made by Landgate which has not been stated expressly in this Agreement, or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by Landgate.
- 12.3 The Distributor acknowledges that to the extent Landgate has made any representation which is not otherwise expressly stated in this Agreement, the Distributor has been provided with an opportunity to independently verify the accuracy of that representation.

13 Termination

- 13.1 Landgate may terminate this Agreement by notice to the Distributor with immediate effect if:
- (a) the Distributor commits a fraudulent act (or acts) against Landgate;
 - (b) the Distributor has been guilty of misrepresentation in its dealing with Landgate;
 - (c) the commencement of any proceedings involving the insolvency of the Distributor including the liquidation or bankruptcy of the Distributor or its dissolution for any reason;
 - (d) the Distributor fails to perform any of its obligations under this Agreement and the default has not been remedied within 7 days of the date of a notice from Landgate to the Distributor describing the default and requiring remedial action.
- 13.2 In the event of any default, Landgate may, in addition to any other remedies:
- (a) charge and recover from the Distributor all costs reasonably incurred by Landgate in relation to the enforcement and/or collection of any overdue amounts; and
 - (b) perform on behalf of the Distributor any obligations that the Distributor should have done or is required to do under this Agreement.

14 Obligations when Agreement Ends

- 14.1 The expiration or termination of the Agreement does not affect any rights, liabilities or obligations of the parties as a result of anything occurring before the expiration or termination.
- 14.2 On termination of this Agreement, the Distributor must:
- (a) immediately calculate, report to Landgate and pay Landgate all fees and charges owing;
 - (b) immediately cease to use all Location Information Products;
 - (c) delete and expunge, or arrange for the deletion of any Location Information Product obtained from Landgate, within 14 days of the Termination Date; and
 - (d) return to Landgate, or delete and expunge, all of Landgate's Confidential Information.
- 14.3 The Distributor must:
- (a) provide Landgate with a notice certifying that **clause 14.2** has been complied with, within 14 days of the Termination Date;
 - (b) maintain the security and confidentiality of all of Landgate's Confidential Information;
 - (c) co-operate with Landgate in every other respect, as it may reasonably require, to minimise any loss, damage or inconvenience to Landgate and its customers resulting from the expiration or termination of this Agreement; and
 - (d) permit Landgate or any person authorised by Landgate to inspect and audit the Distributor for compliance purposes.
- 14.4 This clause will survive termination of this Agreement.

15 Further Term or Holding Over Period

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

16 Force Majeure

- 16.1 A party to this Agreement will not be entitled to exercise its rights and remedies upon the default of the other party if that default:
- (a) is caused by an act or event beyond the reasonable control of that other party;
 - (b) continues for longer than one month; and
 - (c) was not reasonably foreseeable at the time this Agreement was entered into.
- 16.2 Both parties will be released from their respective obligations in the event of national emergency, war, prohibitive governmental legislation or if any other cause beyond the reasonable control of the parties renders performance of this Agreement impossible.
- 16.3 Neither party will be in breach of its obligations which it cannot fulfil as a result of an event contemplated in **clauses 16.1 and 16.2**, provided each party notifies the other as soon as a party believes an occurrence has occurred of the type contemplated in **clauses 16.1 and 16.2**.
- 16.4 If the situation specified in **clauses 16.1 and 16.2** occurs, the Distributor must comply with its obligations in **clause 14**.

17 Dispute Resolution

- 17.1 Before resorting to external dispute resolution mechanisms, the parties must attempt to settle by negotiation in good faith any dispute in relation to this Agreement and where practicable, each party will refer the matter to personnel who have authority to intervene and direct some form of resolution.
- 17.2 Either party may give the other party formal Notice in writing of a dispute and if the dispute is not settled within 10 Business Days, it must be submitted to the dispute resolution process described in this **clause 17**.
- 17.3 It is agreed by both parties that the dispute resolution process will first consist of mediation.
- 17.4 In the absence of agreement, the mediation shall be conducted by a single mediator who is to be appointed by the *President of the Law Society of Western Australia* within 10 Business Days of request for appointment by one party to the other.
- 17.5 During the mediation:
- (a) the parties may not be represented by legal practitioners;

- (b) the mediator shall determine the process for mediation; and
 - (c) the costs of the mediation shall be shared equally by the parties.
- 17.6 If the dispute remains unresolved after 30 days, either party may then have recourse to the courts.

18 Notices

Any notice given under this Agreement must:

- (a) be in writing and signed by a person duly authorised by the sender;
- (b) be addressed to the intended recipient at the address, facsimile or email address specified in **Item 2**, or the address, facsimile or email address last notified by the intended recipient to the sender; and
- (c) be given and will be taken to have been given or made:
 - (i) for delivery in person, when delivered;
 - (ii) for posting, 3 Business Days after posting (or 7 Business Days if to or from a place outside Australia);
 - (iii) for facsimile transmission, at the time of transmission provided the sender's facsimile machine produces a report confirming successful transmission of the facsimile in its entirety, provided that if transmission occurs at a time later than 4:00pm at the recipient's location, the Notice will be deemed duly given at 9:00am on the next Business Day; and
 - (iv) for e-mail, when the email enters the recipient's e-mail server.

19 General Terms

- 19.1 The Distributor must do all things and sign all documents necessary to give effect to the provisions of this Agreement.
- 19.2 Any variation of the terms and conditions of this Agreement will only be binding if in writing and signed by both parties.
- 19.3 If there is any inconsistency between this Agreement and the Schedule to this Agreement, the Schedule prevails to the extent of that inconsistency.
- 19.4 This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements or representations, written or oral.
- 19.5 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.
- 19.6 A party may exercise any right at its discretion, and separately or concurrently with any another right. A single or partial exercise of a right by a party does not prevent a further exercise of that right or any other right. Failure by a party to exercise, or any delay in exercising, a right does not prevent its exercise.
- 19.7 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.
- 19.8 Unless otherwise specified, the Distributor must not assign or transfer its rights under this Agreement unless it has first obtained the written consent of Landgate which may be withheld in its absolute discretion.
- 19.9 If the Distributor is a corporation (other than a public company as defined in the Corporations Act 2001 (Cth)) the Distributor is deemed to have assigned this Agreement if:
- (a) anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Distributor to another person; or
 - (b) there is any change in control of the Distributor within the meaning of the Corporations Act 2001 (Cth).

- 19.10 The Distributor is not by virtue of this Agreement a partner, joint venturer, employee or agent of Landgate, nor does the Distributor have any power or authority to bind or represent Landgate, or represent itself as such.
- 19.11 If any provision of this Agreement becomes invalid, illegal or unenforceable for any reason, this Agreement shall remain otherwise in full force apart from such provision which shall be deemed deleted or the provision shall be read down to the extent reasonable to make it valid and enforceable, at Landgate's election.
- 19.12 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.

20 Interpretation

20.1 In this Agreement, unless the contrary intention appears:

- (a) item numbers refer to those in the **Schedule**;
- (b) words in the singular include the plural and vice versa;
- (c) any gender includes the other genders;
- (d) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (e) headings and bold print are for reference only and do not affect interpretation;
- (f) if any form of the word 'include' is used, it is to be read as if followed by the words 'without limitation';
- (g) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (h) where a party to this Agreement is more than one person, they are jointly and severally liable under the terms of this Agreement;
- (i) where time is to be calculated by reference to a day or event, that day or event is included;
- (j) any Schedule, Annexure or document entered into pursuant to this Agreement whether executed at the time of entering into this Agreement or later, is incorporated into and forms part of this Agreement;
- (k) waiver by any party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach;
- (l) no decision, exercise of discretion, judgment or opinion or approval of any matter mentioned in this Agreement or arising from it, will be deemed to have been made by Landgate, unless in writing.
- (m) a reference to:
 - (i) a person includes a company, partnership, joint venture, unincorporated association, corporation, government or statutory body or authority, or body corporate;
 - (ii) a person includes the person's legal personal representatives, executors, administrators, successors and permitted assigns;
 - (iii) a person includes that party's officers, employees, contractors, agents, invitees and board members;
 - (iv) a statute, ordinance, code or other law includes regulations, by-laws and rules and any successive statutory instrument as modified or replaced;
 - (v) any agreement or document is a reference to that agreement or document as amended, supplemented or replaced from time to time;
 - (vi) a currency, including dollars or \$ is to the Australian currency, unless otherwise stated;
 - (vii) a right includes a benefit, remedy, discretion or power;
 - (viii) time is to Western Standard Time, Perth, Western Australia;

21 Definitions

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

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

Approved Purpose means the purpose specified in **Item 11**.

Confidential Information means information that:

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

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

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

CPI Review Date means the annual date(s) on which the fees and charges made under this Agreement may be reviewed, as specified in **Item 14**.

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

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

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

Holding Over Period means the period during which the parties continue the operation of this Agreement, despite no formal renewal in accordance with **clause 15**.

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

Location Information Product means the product as specified in **Item 7** that is:

- (a) in the Format specified in **Item 9**; and
- (b) in the Metadata specified in **Item 10**;

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

Termination Date means the earliest of:

- (a) the date or latest date specified in **Item 5**;
- (b) if the Agreement is terminated earlier, that date; and

- (c) if the parties enter into a Further Term or Holding Over Period, the expiry date of the same.

SAMPLE

SCHEDULE

Item 1 Date of Agreement

Item 2 Details of Parties

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

Item 3 Agreement Number

Item 4 Commencement Date [Landgate to complete]

Item 5 Term and Termination Date

Item 6 Further Term

Item 7 Location Information Products

(a) [insert]

(b) [insert]

Item 8 Updates to the Location Information Products

Not applicable

Item 9 Format of the Location Information Products

[insert format details]

Item 10 Metadata of the Location Information Products

[insert metadata details]

Item 11 Approved Purpose

- 11.1 The Distributor may only use the Location Information Product for its:
- (a) Distribution Use, outlined in **Item 11.2**;
 - (b) Consultant Use, outlined in **Item 11.3**; and
 - (c) Internal Business Use, outlined in **Item 11.4**.
- 11.2 **Distribution Use** permits the Distributor to distribute and supply the Location Information Product directly to its customers or third parties for their Internal Business Use, provided no variation is made to the Location Information Product. A variation to the Location Information Product does not include how it is provided to the customer, eg digital, hard copy, incorporated in a frame etc as long as it conforms with the terms of this agreement and every supply is recorded on the Register.
- 11.3 **Consultant Use** is use where the Distributor engages a Consultant for a specific project requiring use of the Location Information Product and entitles the Distributor to disclose the Location Information Product to the Consultant, provided the Consultant:
- (a) only uses the Location Information Product for the Internal Business Use of the Distributor;
 - (b) receives no benefit from use of the Location Information Product except the fee paid by the Distributor;
 - (c) is otherwise bound by the terms of this Agreement (including deleting and removing all the Location Information Product from its systems upon the finalisation or termination of the consultancy); and
 - (d) if required by Landgate, enters into a Consultant's Confidentiality Deed in the form prescribed by Landgate.
- 11.4 **Internal Business Use** is use of the Location Information Product solely for the personal and internal administration and operation of the Distributor's business and does not entitle the Distributor to make available or to provide the Location Information Product, or any part thereof, to any third party outside the business.

Item 12 Fees and Charges

[Drafting Note: amend the following fees and charges and threshold in accordance with the On-seller Pricing Guidelines, or otherwise confirm with C&P appropriate thresholds. Carefully amend considering the products being distributed and create an incentive schedule to encourage greater volume of sales.]

The Distributor is charged at the following wholesale rates for the following supply volumes:

- (a) 0 to 99 maps per quarter - 25% discount on Landgate's retail PDF price per map;
- (b) 100 to 249 maps per quarter – 40% discount on Landgate's retail PDF price per map;
- (c) 250 maps or more per quarter. – 60% discount on Landgate's retail PDF price per map.

Item 13 Register

The Distributor must record, maintain and provide a Register to Landgate:

- (a) via post or email, attention to Commercialisation & Partnerships;
- (b) every quarter during the Licence Term or within 14 days after the Termination Date if the Termination Date is sooner than the end of a quarter; and
- (c) with the following information:
 - (i) the number and type of Location Information Products sold;
 - (ii) the format the Location Information Product is sold (eg PDF, hardcopy etc); and
 - (iii) the total amount owing by the Distributor, in accordance with the fees and charges.

Item 14 CPI Review Date

Annually on 1 July

Item 15 Insurance

- (a) \$5,000,000 product and public liability.
- (b) \$1,000,000 professional indemnity.

Item 16 Special Conditions

[insert or Not applicable]

EXECUTION

Executed as an Agreement

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

Date: / /

Signature of Witness

Name of Witness (print)

Date: / /

Distributor's Execution

By signing this Agreement the Distributor's representative warrants that he/she has the authority to sign for and on behalf of:

Name of Distributor (Print)

Signature of Authorised Person

Name of Authorised Person (Print)

Date: / /

in the presence of:

Signature of Witness

Name of Witness (print)

Date: / /