



LICENCE TO SELL ENHANCED
NATIONAL MAPPING DATA PRODUCTS

NATIONAL MAPPING DIVISION

GEOSCIENCE AUSTRALIA

DEPARTMENT OF INDUSTRY, TOURISM & RESOURCES

And

("the Licensee")

VERSION 3

**National Mapping Division, Geoscience Australia,
Department of Industry, Science and Resources
PO Box 2, Belconnen, ACT 2616. Tel:02 6201 4201, Fax: 02 6201 4366.**

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SCHEDULES

Schedule A - Data Licensed by the Commonwealth to the Licensee

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THIS AGREEMENT is made this _____ day of _____ 20 ____.

BETWEEN

THE COMMONWEALTH OF AUSTRALIA ("**the Commonwealth**") represented for the purposes of this Contract by the National Mapping Division, Geoscience Australia ("**National Mapping**") of the Department of Industry, Science and Resources, whose address is PO Box 2, Belconnen ACT 2616, of the one part

and

_____, ("**the Licensee**"), a company incorporated in Australia, ACN _____, ABN _____, whose registered office is situated at _____ of the other part

WHEREAS

- A. the Commonwealth is the owner of the Intellectual Property in the information ("**the Data**") described in Schedule A;
- B. the Licensee wishes to obtain a licence from the Commonwealth to enhance the Data for the purpose of developing, marketing and selling the products and services specified in **Schedule B**; ;
- C. the Commonwealth has agreed to grant a licence to the Licensee upon the terms and conditions set out below.

IT IS HEREBY AGREED AS FOLLOWS:

Interpretation

1.1 In this Licence, unless the contrary intention appears or the context requires:

"**Approved Agent**" means an agent listed in **Schedule D**, or subsequently approved in writing by the Commonwealth for the purposes of this Licence.

"**Data**" means the Data described in **Schedule A** current at the date of delivery, and includes any revision or update provided by the Commonwealth during the currency of this Licence.

"**Enhancement**", in relation to the Data, includes any adaptation, redevelopment or modification of the Data, and any merger of the Data with other data, or a computer program, intended to be accessed or operated in conjunction with the Data.

"**Financial Year**" means a period of twelve (12) months, or where the context necessitates a part of such period, during the currency of this Agreement, ending on the 30 June.

"**GST**" means:

- (a) the same as in the GST Law;
- (b) any other goods and services tax, or any tax applying to this transaction in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge under a law for such a tax.

"**GST Law**" means the same as "GST law" means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"**Intellectual Property**" includes all copyright, and all rights in relation to registered and unregistered trademarks (including service marks), registered designs and confidential information (including trade secrets and know-how), and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

"**Licence**" means the non-exclusive licence granted by the Commonwealth to the Licensee under clause 2.

"**person**" includes a body corporate or incorporate or individual or a body politic.

"**VAR Product**" means a product referred to in **Schedule B** derived by Enhancements to the Data.

"**VAR Service**" means a service referred to in **Schedule B** which incorporates the Data or a VAR Product.

1.2 A reference in this Licence to **the Licensee** shall be read as including a reference to the agents of the Licensee.

1.3 In this Licence:

- (a) words importing the singular include the plural;
- (b) words importing one gender include both the other genders.

Date: 18/12/01

- 1.4 A reference in this Licence to a Schedule shall be read as including a reference to that Schedule as amended or substituted from time to time by written agreement between the Parties.
- 1.5 In the event of any conflict between the terms and conditions contained in the clauses of this Licence and any part of the Schedules and attachments (if any) then the terms and conditions of the clauses shall prevail.
- 1.6 Words defined in the GST Law have the same meaning in this Licence unless the context makes it clear that a different meaning is intended.
- 1.7 A reference in this Licence to a liability to pay GST includes any notional liability to pay GST.
- 1.8 A reference in this Licence to an entitlement to an input tax credit includes a notional input tax credit.

2. Licence

- 2.1 The Commonwealth hereby grants and the Licensee accepts a non-exclusive licence to enhance the Data for the purpose of developing the VAR Products and the VAR Services and thereafter to sell the VAR Products and the VAR Services to users..
- 2.2 The Licence is strictly limited to the development and sale of the VAR Products and the VAR Services and the Licensee must not assign the Licence or grant any sublicense to use the Data without the prior written approval of the Commonwealth which may be subject to such terms and conditions as the Commonwealth may in its absolute discretion impose..

3. No Warranty

- 3.1 The Commonwealth does not warrant that the Data is free from errors.
- 3.2 Any updates or revisions to the Data which are made during the period of the Licence will be supplied to the Licensee for a delivery fee which may be set by the Commonwealth from time to time.

4. Ownership

The Commonwealth retains ownership of all copies of the Data, whether in its original form or as reformatted or converted on to different media by the Licensee. All copies of the Data in the possession of the Licensee or any of its agents must be promptly returned to the Commonwealth on the expiry or earlier termination of this Licence.

5. Delivery

- 5.1 The Commonwealth shall deliver the Data to the Licensee promptly after execution of the Licence.
- 5.2 The Data shall be provided to the Licensee in the formats nominated in **Schedule A**.

6. Duration

- 6.1 The Licence shall take effect on and from the date first written above and shall continue in force until 4.00 pm on 30 June 2003.

7. Licence Fee and Royalties

- 7.1 The Licensee shall pay to the Commonwealth a licence fee as specified in **Schedule C** within 30 days of execution of this Licence.
- 7.2 If payment of the licence fee is not made within 30 days of the due date, the Commonwealth shall be entitled to suspend its remaining obligations under this Licence and re-possess any copy of the Data in the possession of the Licensee or its agents.
- 7.3 In respect of the provision to a user of each VAR Product or VAR Service specified in **Schedule B**, the Distributor shall pay to the Commonwealth a royalty as specified in **Schedule C**.
- 7.4 The licence fee and royalties are exclusive of any taxes (except GST), duties or charges payable in respect of this Licence or any transaction arising under it.

8 GST

- 8.1 Subject to sub-clauses 8.3 and 14.3, the licence fees and royalties for any supply by the Commonwealth to the Distributor under this Licence include any GST payable for that supply.
- 8.2 The Commonwealth must within 28 days of a request from the Distributor issue a tax invoice (or an adjustment note) to the Distributor for any taxable supply under this Licence, and must include in the tax invoice (or adjustment note) the particulars required by the GST Law for the Distributor to obtain an input tax credit for that GST.
- 8.3 (a) If the consideration for any supply by the Commonwealth to the Distributor under or in connection with this Licence is stated to be exclusive of GST, then that consideration does not include any GST payable for that supply and the Distributor must pay to the Commonwealth an amount equal to any GST payable for that supply without deduction or set-off of any other amount and must make that payment as and when the Distributor must pay or provide the licence fee or royalty or part of it.
- (b) So far as the consideration for a supply by Commonwealth to the Distributor is not consideration expressed as an amount of money, then that consideration does not include any GST payable for that supply and the Distributor must pay to Commonwealth an amount equal to any GST payable for that supply referable to that consideration without deduction or set-off of any other amount and must make that payment as and when the Distributor must pay or provide the licence fee or royalty or part of it.

9. Auditing

- 9.1 Within 90 days of the expiration of each Financial Year, the Distributor shall submit to the Commonwealth an independently audited financial statement in respect of its development and exploitation of VAR Products and VAR Services during that Financial Year. The full costs of auditing will be borne by the Distributor.
- 9.2 The Commonwealth, at its expense, may undertake an independent audit in respect of the activities of the Distributor under this Agreement, for which the Distributor shall make available all relevant documents and records concerning those activities.
- 9.3 For the purposes of sub-clause 9.2, the Commonwealth acting through its agents or authorised representatives, may at any time and without notice enter any premises where the Commonwealth reasonably believes copies of the Data or VAR Products, or documents or records relating to the use or exploitation of the Data or VAR Products or the provision of VAR Services, may be kept.

10. Enhancements to the Data

- 10.1 For the purpose of the development of the VAR Products or the VAR Services, the Licensee may convert the Data on to different storage media and into different data formats.
- 10.2 Intellectual Property rights in the VAR Products and the VAR Services shall vest in the Licensee.
- 10.3 If the Licensee enhances the Data for a purpose not authorised by this Licence the Intellectual Property rights in any resulting Enhancement shall vest in the Commonwealth without affecting any other rights accruing to the Commonwealth as a result of the breach by the Licensee of this Licence.
- 10.4 The Licensee acknowledges that Intellectual Property in the Data remains vested in the Commonwealth and the Licensee agrees not to challenge or call into question the Commonwealth's rights to the Data. The Licensee further acknowledges that all VAR Products and VAR Services derived from or incorporating the Data constitute in part a reproduction of the Data.

11. No Access to Data by Users

The Licensee must take steps to ensure that a user to whom VAR Products or VAR Services are to be supplied is not able to access the Data. If it comes to the attention of the Commonwealth that a user is able to access Data the Commonwealth may by written notice immediately terminate this Licence.

12. Obligations of Licensee

- 12.1 The Licensee shall:
- (a) immediately notify the Commonwealth of any breach of the Commonwealth's Intellectual Property rights in the Data, or any improper or wrongful use of the names or marks associated with the Data;
 - (b) use its best endeavours to promote the VAR Products and the VAR Services;
 - (c) promptly bring to the attention of the Commonwealth any information in the possession of the Licensee which may be of value to the Commonwealth in relation to the marketing or support of the Data;

(d) at all times act in good faith and give the Commonwealth such assistance and cooperation as it reasonably requires in connection with the operation of this Licence.

13. Confidentiality

13.1 The Licensee shall, subject to clause 13.2, treat the Data as private and confidential and shall maintain the Data in safe custody.

13.2 The Licensee may permit employees or contractors to access the Data where such access is necessary to facilitate the exploitation of the License provided that the Licensee must take reasonable steps to ensure that such employees or contractors keep the Data confidential and do not disclose it to any persons or use it for any purpose other than in accordance with the Licence.

14. Release and Indemnity

14.1 The Licensee agrees to:

(a) release the Commonwealth, and its officers, employees and agents from all liability for actions, claims, costs or expenses, loss, damage or injury, which may be suffered by it arising from the Licensee's use of the Data;

(b) indemnify the Commonwealth, and its officers, employees and agents, in respect of all claims, costs, expenses, loss, damage or injury asserted or suffered by any person and arising from any use of or reliance upon the Data or any Enhancement or any error or corruption in the Data or otherwise as a consequence of any unlawful or negligent act or omission of the Licensee;

(c) at the request of the Commonwealth, promptly do all acts and things and execute all documents which might be necessary so that any such release and indemnity will enure for the benefit of the Commonwealth, its employees, agents and contractors.

14.2 The provisions of this clause shall survive the expiration or earlier termination of this Licence.

14.3 If a payment to satisfy a claim or a right to claim under or in connection with this Licence gives rise to a liability on the part of the payee to pay GST, the payer must pay the payee the amount of that GST in addition to the amount to satisfy the claim or right.

14.4 If a party has a claim under or in connection with this Licence for a cost on which that party must pay GST, the claim is for the cost plus all GST (except any GST for which that party is entitled to an input tax credit).

14.5 If a party has a claim under or in connection with this Licence whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

15. Endorsement and Trade Marks

15.1 The Licensee shall ensure that all VAR Products and VAR Services provided to users under this Licence bear or include a statement acknowledging that the VAR Product or VAR Service is based upon the Data, and that the Commonwealth remains the owner of all Intellectual Property in the Data. Each such statement shall be in the form specified in **Schedule E**, or a form subsequently approved in writing by the Commonwealth.

15.2 The Licensee shall ensure that all promotional material provided by the Commonwealth in connection with the Data, including any Commonwealth trademark, get-up or design associated with the Data, are applied and used where directed by the Commonwealth, and only in a manner and form approved by the Commonwealth.

16. Advance Copy

16.1 The Licensee shall ensure that any VAR Products or VAR Services provided or offered to users do not involve any corruption of, or introduce any errors into, the Data.

16.2 To ensure compliance with clause 16.1, the Licensee shall, where possible, provide the Commonwealth at no cost with an advance copy of any VAR Product, and offer to demonstrate to the Commonwealth any VAR Service, before that VAR Product or VAR Service is provided or offered to users.

16.3 To ensure compliance with clause 16.1, the Licensee shall, where the service is a subscription service provided over the Internet, provide the Commonwealth at no cost with a subscription to the service for the purposes of auditing the service from time to time.

17. Termination

17.1 This Licence may be terminated:

(a) if either Party breaches any of its terms and fails to remedy the breach within one month of a written notice from the other Party specifying the breach and requesting the remedying thereof;

(b) by the Licensee giving the Commonwealth three month's written notice of termination of the Licence.

- 17.2 From the effective date of termination of this Licence the Licensee shall cease using the Data for any purpose. Within 30 days of the effective date of termination the Licensee shall return the Data and any copies of it to the Commonwealth.
- 17.3 The termination of this Licence under clause 17.1 shall be without prejudice to the rights of either Party for moneys due under the Licence prior to termination.
- 17.4 Such termination shall not in any way affect the continuation of any sale agreement relating to the VAR Products or the VAR Services entered into between the Licensee or an Approved Agent and a user prior to the effective date of termination. The Commonwealth shall be entitled to any remuneration which falls due under such sale agreement after the effective date of termination.
- 17.5 In the event of termination of this Licence, the Licensee shall cooperate with the Commonwealth and promptly do all acts and things and execute all documents which may be necessary to assign to the Commonwealth the benefit of any such licence agreement.

18. Relationship of Parties

- 18.1 Neither of the Parties shall be deemed by virtue of this Licence or for any purpose be deemed to be a partner or agent of the other Party.
- 18.2 Each Party undertakes not to represent itself, and to ensure that its employees and agents do not represent themselves, as employees, partners or agents of the other Party.

19. Compliance with Laws

The Licensee shall in carrying out this Licence comply with the provisions of any relevant Commonwealth, State or Territory laws for the time being in force.

20. Applicable Law

The Licence shall be governed by and construed in accordance with the laws for the time being in force in the Australian Capital Territory.

21. Waiver

No forbearance, delay or indulgence by a party in enforcing the provisions of the Licence shall prejudice or restrict the rights of that party, nor shall waiver of those rights operate as a waiver of any subsequent breach.

22. Notices

- 22.1 All notices which are required to be given under this Licence shall be in writing and shall be:
- (a) delivered to the other Party personally at the address stated below; or
- (b) sent by facsimile to the facsimile number specified below, in which case notice shall be deemed to have been received on the receipt of confirmation from the answering machine; or
- (c) forwarded by registered mail to the address specified below, in which case notice shall be deemed to have been received 48 hours after it was posted.
- 22.2 Addresses of the Parties to this Licence:
- (a) Address of Commonwealth:

The General Manager
 Australian Surveying and Land Information Group
 PO Box 2, BELCONNEN ACT 2616
 AUSTRALIA
 Facsimile Number: (02)6201 4366

(b) Address of the Licensee:

Postal:

Locality: _____ State: _____ Postcode: _____

Delivery (if different):

Locality: _____ State: _____ Postcode: _____

Street (if different):

Locality: _____ State: _____ Postcode: _____

Facsimile Number: ()

Phone Number : ()

Email :

Internet :

WITNESS WHEREOF the parties hereto have executed this Licence the day and year first above written:

SIGNED for and on behalf of THE COMMONWEALTH OF AUSTRALIA }
 by **Brian Burbidge** [Name] } _____
Director, Customer Support [Position] }
 National Mapping Division, Geoscience Australia }
 of the Department of Industry, Science & Resources, Australian }
 Surveying and Land Information Group, in the presence }
 of _____ [Name] } _____
 _____ [Position] }
 _____ [Date] }

SIGNED for and on behalf of the Distributor }
 by _____ [Name] } _____
 _____ [Position] }
 the presence of
 _____ [Name] } _____
 _____ [Position] }

Date: 18/12/01

_____ [Date]

}

SCHEDULE A

DATA LICENSED BY THE COMMONWEALTH TO THE LICENSEE

[NB : This Schedule should specify the Data to be supplied and the formats in which it is to be provided]

Item	Product Name	Format
1		
2		
3		
4		
5		
6		

Note:

The appropriate acknowledgment to the copyright holder (as set out in Schedule E) must be provided where the products are incorporated in the value added product or service.

SCHEDULE B

VALUE ADDED PRODUCTS AND SERVICES TO BE DEVELOPED AND DISTRIBUTED

[NB : This Schedule should contain detailed and accurate particulars of the value added services and products so that the proportion of National Mapping Data can be assessed and so that the provision of such services and data can be readily identified, categorised and quantified in accordance with **Schedule C**. If necessary samples of the proposed Enhancements should be appended.]

SCHEDULE C

LICENCE FEES PAYABLE BY THE LICENSEE

Licence Fee (Including GST)

Licence fee to be paid to the Commonwealth for the Data specified in **Schedule A** is:

The licence fee listed in the National Mapping Digital Data Product Price List

Item	Product Name	RRP
1		
2		
3		
4		
5		
6		

Royalties (Including GST)**Payment of Royalties****Financial Statement**

The Licensee will provide a financial statement in respect of the use of the Data to National Mapping within 30 days of the last day of each quarter including a 'nil return'. where no sales where made.

SCHEDULE D

COMPANY DETAILS OF APPROVED AGENTS FOR THE LICENSEE FOR DISTRIBUTION OF THE VALUE ADDED
PRODUCTS AND SERVICES SPECIFIED IN SCHEDULE B

Details should include Agents Name, Trading Name, Australian Company Number (ACN), Australian Business Number (ABN), Contact Name, Contact Number (Fax Phone) and Address.

SCHEDULE E
ENDORSEMENT REQUIREMENTS FOR DISTRIBUTION OF
VALUE ADDED PRODUCTS AND SERVICES SPECIFIED IN SCHEDULE B

Use of National Mapping Data

For situations that involve the use of digital mapping information in a digital product:

Ó Commonwealth of Australia, National Mapping Division, Geoscience Australia: [Year of first publication] All rights reserved.

The mapping information contained in this product is Commonwealth Copyright. Apart from any use permitted to the licensee under a duly executed licence agreement, the information may not be copied, reproduced, translated, or reduced to any electronic medium or machine readable form, in whole or in part, without the prior written consent of the General Manager, National Mapping Division, Geoscience Australia, Department of Industry, Tourism and Resources, Canberra, ACT. Internet: www.auslig.gov.au

For situations that involve the use of digital mapping information to produce a graphical product:

Ó Commonwealth of Australia, National Mapping Division, Geoscience Australia: [Year of first publication] All rights reserved.

The (Commonwealth graphical mapping information content- description) is Commonwealth Copyright and has been derived from Commonwealth digital mapping information with the permission of the General Manager, National Mapping Division, Geoscience Australia, Department of Industry, Tourism and Resources, Canberra, ACT. Internet: www.auslig.gov.au

Short version:

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General Manager, National Mapping Division, Geoscience Australia, Department of Industry, Tourism and Resources, Canberra, ACT. Internet: www.auslig.gov.au

For situations that involve the use of **Australia Post Postcode Boundaries**:

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