

**Department of Planning, Transport and Infrastructure—Planning Division (Land Use Planning)**  
**Spatial Data Download Conditions of Licence**

1. In this Agreement, unless the context otherwise requires:
  - 1.1 **"Acceptance Date"** is the date specified in the licence was agreed to and the dataset was downloaded;
  - 1.2 **"Commercialise"** means in respect of the dataset or products or services derived from the dataset, the distribution (whether for remuneration or otherwise), sale, hire or offering for distribution, sale, hire of any product embodying the information contained on the dataset.
  - 1.3 **"Dataset"** means the compilation of information comprised in the downloaded dataset;
  - 1.4 **"General Licence"** means subject to the other conditions of this Agreement a licence to use the dataset for the general purposes;
  - 1.5 **"Intellectual Property Rights"** means any patent, copyright, trademark, trade name, design, trade secret, know how or other form of confidential information or any right to registration of such rights and any other form of intellectual property right whether arising before or after the execution of this Agreement;
  - 1.6 **"Licence"** is the Project Specific or General licence granted pursuant to this Agreement by the Department to the Licensee for the use of the dataset;
  - 1.7 **"Licence Fee"** is the fee specified in Part A payable by the Licensee to the Department for the use of the dataset;
  - 1.8 **"Licensee"** means the Customer referred to in Part A and shall include its employees, contractors, officers and agents;
  - 1.9 **"Meta Data"** means the data annexed in SCHEDULES to be used as an aid in interpreting the information contained in the dataset;
  - 1.10 **"The Department"** means Department of Planning, Transport and Infrastructure within the Government of South Australia;
  - 1.11 the plural includes the singular and vice versa; and
  - 1.12 references to natural persons include corporations and vice versa.
2. **SCOPE OF THIS AGREEMENT**
  - 2.1 Subject to the terms and conditions of this Agreement, and in consideration of the payment of the Licence Fee the Department grants to the Licensee a non-exclusive licence to use the dataset.
  - 2.2 It is a condition precedent to this Agreement that in respect of the granting of a project specific licence, the Licensee provide the Department with a project brief.
  - 2.3 No failure or omission to perform or observe any of the provisions of this Agreement to be performed or observed by any party, as the case may require, shall be or be deemed to be a breach or default of this Agreement nor create any liability if the same arises from or is caused by force majeure or any cause or condition that is substantially beyond the power of that party to control or avoid.
3. **DURATION OF LICENCE**
  - 3.1 Subject to Condition 3.2 this Agreement shall take effect on the Acceptance Date and will continue unless earlier terminated in accordance with the provisions of this Agreement.
  - 3.2 Where the Licensee has been granted the Department a project specific licence, the term of the Licence shall be the duration of the project specified in Part A.
4. **GRANT OF LICENCE**
  - 4.1 The Department warrants it has the right and authority to grant the Licence to the Licensee.
  - 4.2 Subject to the other provisions of this condition, the Department grants to the Licensee a non-exclusive, non-transferable licence to:
    - 4.2.1 use reproduce and adapt the dataset for the purposes of demonstrations, displays, reports and statistical analysis and subject to Condition 7.2, permit its agents, consultants, and contractors with which it has contracted for the provision of services to the Licensee to so use, reproduce and adapt the Data; and
    - 4.2.2 compile the dataset with other data held by the Licensee.
  - 4.3 The Licensee is not entitled to copy or reproduce the dataset in computer readable or electronic form unless for the purposes of back-up or security.
  - 4.4 The Licensee is not otherwise permitted to commercialise the dataset.
  - 4.5 The Licensee acknowledges that all Intellectual Property Rights (other than the licence to use granted by this Agreement) and title in the dataset shall remain vested in and remain the property of the Crown in right of State of South Australia.
  - 4.6 The Licensee shall be supplied with the dataset via the Department's Spatial Data Download facility.
5. **LICENCE FEE**

The Licence Fee for data from the Department's Spatial Data Download facility is NIL.
6. **SECURITY**

The Licensee shall:

  - 6.1 effect and maintain adequate security measures to safeguard the dataset from access, use or misuse, damage or destruction;
  - 6.2 retain the dataset under the Licensee's effective control; and
  - 6.3 maintain a full and accurate record of the number and location of all copies of the dataset and shall produce that record to the Department when requested to.
7. **CONFIDENTIALITY**
  - 7.1 The Licensee shall subject to Condition 7.2, treat the information contained in the dataset as private and confidential to the Licensee.
  - 7.2 The Licensee shall take all reasonable steps to ensure that any person, including contractors and consultants employed by the Licensee, keep the information contained in the dataset confidential and does not disclose the information contained in the dataset to any person or use the information contained on the dataset for any purpose other than in accordance with the provisions of this Agreement.
  - 7.3 The Licensee's obligations under this Condition 7 shall survive the termination of this Agreement.
8. **DISCLAIMER**
  - 8.1 Although every effort has been made to ensure the correctness and accuracy of the information the dataset, the Department makes no representations, either express or implied, as to the accuracy, currency, completeness or suitability for any particular purpose of the information and accepts no liability for any use of the dataset or any responsibility for any reliance placed on that information. The Licensee acknowledges that the dataset cannot be guaranteed error free and that use of the dataset is at the user's sole risk and that the information contained in the dataset may be subject to change without notice.
  - 8.2 The Licensee acknowledges that the dataset is made available by the Department subject to the data limitations expressed in the dataset's Meta Data.
  - 8.3 The Department will replace any defective media at no charge subject to notification of the said defect within thirty (30) days of the Commencement Date.
  - 8.4 In the event any statute implies terms into this Agreement which cannot be lawfully excluded such terms will apply to this Agreement save that the liability

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of the Department for breach of any such implied term will be limited to the replacement of goods to which the breach relates or the supply of equivalent goods (at the discretion of the Department).

- 8.5 To the extent permitted by law the Department will not be liable for any indirect or consequential damages arising out of a breach of this Licence or arising out of the supply of defective information.
- 8.6 The Licensee acknowledges that it has exercised its independent judgement in acquiring the information and has not relied on any representations made by the Department which has not been stated expressly in this Agreement or upon any descriptions or illustrations or specifications contained in any document including catalogues or publicity material produced by the Department.

**9. COPYRIGHT ACKNOWLEDGMENT**

- 9.1 The Licensee acknowledges that the dataset and where relevant accompanying documentation are the subject of copyright. The Licensee shall not during or any time after the expiry or termination of this Licence carry out or permit any act which infringes that copyright and without limiting the generality of the foregoing the Licensee specifically acknowledges that it may not copy the dataset except as otherwise expressly authorised by this Agreement.
- 9.2 Subject to Condition 9.3 in all circumstances where the Licensee quotes or publishes statistics or records from the dataset a statement acknowledging that the dataset was supplied by the Department must be included.
- 9.3 Any analysis or transformation or reworking of the dataset shall not be attributed to the Department.

**10. INDEMNITY**

The Licensee agrees to release and indemnify the Department and its officers and employees in respect of all claims for loss, damage, or injury suffered by the Department or any third party arising out of either the Licensee's use of the dataset or the information or any part thereof or materials produced or derived from the information contained in the dataset.

**11. TERMINATION**

- 11.1 This Licence may be terminated by the Department:
- 11.1.1 if the Licensee is in breach of any term of this Agreement and such breach is not remedied within fourteen (14) days of written notification by the Department of the breach;
- 11.1.2 if the Licensee, being a corporation becomes the subject of insolvency proceedings;
- 11.1.3 if the Licensee, being a firm or partnership is dissolved; or
- 11.1.4 if the Licensee destroys the information for any reason.
- 11.2 Upon termination the Licensee or its representatives shall destroy any remaining copies of the information and any documentation associated with it or otherwise return or dispose of such material in the manner directed by the Department.
- 11.3 Termination pursuant to this clause shall be without prejudice to any other rights accruing to the Department prior to the date of termination including the right to pursue all remedies available at law or in equity.

**12. ASSIGNMENT**

- 12.1 the Licensee must not assign this Agreement, in whole or in part, or subcontract the performance of any of its obligations under this Agreement without the prior written consent of the Department.
- 12.2 The Department may assign its rights and obligations under this agreement to such person or entity as takes over the assets or assumes the functions of the Department from time to time.

**13. WAIVER**

- 13.1 A waiver of any provision of this Agreement must be in writing.

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

**14. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of South Australia.

**15. NOTICES**

15.1 Any notice to be given or made pursuant to the terms of this Agreement shall be in writing and may be served by delivery, mail or facsimile transmission to the addresses and numbers of the intended recipient as specified in Part A.

15.2 Notice shall be effective and be deemed to have been received as follows:

15.2.1 if delivered, upon delivery; or

15.2.2 if sent by post, the second day of posting; or

15.2.3 if sent by facsimile transmission, upon the sender's facsimile machine producing a transmission report that the facsimile has been sent to the recipient's facsimile number.

A party may modify either its address or facsimile number, from time to time, by a written notice served on the other party.

**16. ENTIRE AGREEMENT**

16.1 No amendments of, or addition to, the provisions of this Agreement shall be binding unless it is in writing and signed by the parties to this Agreement.

16.2 This Agreement constitutes the complete agreement between the parties and supersedes all previous agreements, understandings and negotiations, written or oral, in respect of the matters dealt with in this Agreement.

**SCHEDULES**

Please consult each dataset's metadata listing viewable at:

<http://www.sa.gov.au/topics/housing-property-and-land/building-and-development/land-supply-and-planning-system/planning-data-for-research-and-mapping/spatial-data-downloads>