

CONFIDENTIALITY AGREEMENT

WESTERN AUSTRALIAN LAND INFORMATION AUTHORITY
trading as
LANDGATE

(Disclosing Party)

AND

[OTHER PARTY]

(Receiving Party)

PARTIES

WESTERN AUSTRALIAN LAND INFORMATION AUTHORITY

Trading as Landgate

ACN 86 574793 858

1 Midland Square, Midland WA 6936

(Disclosing Party)

[NAME OF RECEIVING PARTY]

ACN []

Address

(Receiving Party)

BACKGROUND

- A The Disclosing Party possesses the Confidential Information. The Receiving Party wants to have access to the Confidential Information for the Specified Purpose.
- B The Disclosing Party has agreed to disclose the Confidential Information to the Receiving Party subject to the terms and conditions of this Agreement.

AGREEMENT

1 ACCESS

The Receiving Party acknowledges that the Receiving Party may be given access to certain Confidential Information of the Disclosing Party for the Specified Purpose.

2 OBLIGATION OF CONFIDENTIALITY

2.1 Confidentiality

In consideration of the Disclosing Party allowing the Receiving Party to have access to the Confidential Information, the Receiving Party agrees that (i) it will keep confidential the Confidential Information; and (ii) it will ensure that its officers, employees, contractors, agents and advisors will keep confidential the Confidential Information.

2.2 Continuing Obligation

The Receiving Party shall continue to be bound by the covenants and obligations contained in this Agreement even if (a) this Agreement is terminated for any reason, or (b) the Specified Purpose comes to an end for any reason.

3 RECEIVING PARTY'S OBLIGATIONS

3.1 Non-Disclosure and Use

- (a) Unless it has the prior written consent of the Disclosing Party to do so, the Receiving Party will not (i) disclose any of the Confidential Information to any other person; or (ii) use any of the Confidential Information otherwise than for the Specified Purpose.
- (b) The Receiving Party will ensure that its officers, employees, contractors, agents and advisors do not (i) disclose any of the Confidential Information to any other person; or (ii) use any of the Confidential Information otherwise than for the Specified Purpose. This clause 3.1(b) does not apply if the Disclosing Party has given its prior written consent for the disclosure or use.

3.2 Uncertainty

If the Receiving Party is uncertain as to whether any information is Confidential Information, the Receiving Party will treat the information as if it were Confidential Information unless and until the Disclosing Party agrees in writing that the information is not Confidential Information.

3.3 Precautions

The Receiving Party will take all reasonable precautions to (i) maintain the confidentiality of Confidential Information, (ii) prevent the unauthorised disclosure of the Confidential Information, and (iii) prevent the unauthorised use of the Confidential Information.

3.4 Unauthorised Disclosure or Use

If the Receiving Party becomes aware of any actual or likely unauthorised disclosure or use of the Confidential Information, then the Receiving Party will (i) immediately notify the Disclosing Party of the actual or likely unauthorised disclosure or use of the Confidential Information, and (ii) take all steps which the Disclosing Party may reasonably require in relation to such actual or likely unauthorised disclosure or use.

3.5 Return of Confidential Information

At the conclusion of the Specified Purpose or upon the written request of the Disclosing Party, the Receiving Party will, at its own expense, immediately deliver to the Disclosing Party all records and materials (and copies of those records and materials) containing or embodying the Confidential Information that are in the possession of (a) the Receiving Party, its officers, employees, contractors, agents or advisors, or (b) any other person to whom the Receiving Party has disclosed all or any of the Confidential Information (whether or not with the consent of the Disclosing Party).

4 EXCEPTIONS

The Receiving Party will not be bound to keep confidential any Confidential Information if and to the extent that any one or more of the following circumstances occur.

- (a) The Confidential Information is, or becomes part of the public domain otherwise than by breach of this Agreement by the Receiving Party.
- (b) Prior to the disclosure of the Confidential Information by the Disclosing Party to the Receiving Party, the Confidential Information was already in the Receiving Party's possession as a result of the Confidential Information having been lawfully obtained by the Receiving Party from another person without any restriction as to use or disclosure.
- (c) After the disclosure of the Confidential Information by the Disclosing Party to the Receiving Party, the Confidential Information is lawfully obtained by the Receiving Party from another person without any restriction as to use or disclosure.
- (d) The Confidential Information is required to be disclosed by the operation of any law, stock exchange, judicial or parliamentary body or governmental agency.
- (e) The Disclosing Party has given its written consent to the disclosure of the Confidential Information.
- (f) The Confidential Information is disclosed by the Receiving Party to its officers, employees, agents, contractors or professional advisers who have agreed in writing to keep confidential the Confidential Information.
- (g) If the Recipient Party is an agent, agency, department or instrumentality of the State of Western Australia, then the Recipient may disclose the Confidential Information to (i) any Western Australian government Minister, or (ii) the Western Australian Parliament, or (iii) any committee or sub-committee of the Western Australian Parliament.

5 REMEDY

5.1 Financial and Other Loss and Damage

The Receiving Party acknowledges and accepts that (i) the Disclosing Party would suffer financial and other loss and damage if there were any breach of this Agreement, and (ii) monetary damages would be an insufficient remedy.

5.2 Injunctive Relief

The Receiving Party acknowledges and accepts that, in addition to any other remedy which may be available in law or equity, the Disclosing Party is entitled to injunctive relief to prevent a breach of this Agreement and to compel specific performance of this Agreement.

5.3 Costs and Expenses

Following a written request from the Disclosing Party, the Receiving Party will immediately reimburse the Disclosing Party for all costs and expenses (including legal costs and disbursements on a full indemnity basis) incurred by the Disclosing Party in enforcing the obligations of the Receiving Party under this Agreement.

6 INDEMNITY

6.1 Indemnity for Costs

The Receiving Party will indemnify the Disclosing Party against all costs, expenses, actions or claims directly or indirectly incurred or suffered by the Disclosing Party as a result of any breach of this Agreement by the Receiving Party.

6.2 Scope of Indemnity

The indemnity in clause 6.1 extends to and includes all costs, damages and expenses incurred by the Disclosing Party in defending and/or settling any such costs, expenses, actions, suits proceedings, claims or demands (including legal costs and disbursements on a full indemnity basis).

7 CUMULATIVE RIGHTS

The rights under or arising out of this Agreement do not exclude any other rights of either party.

8 WAIVER

8.1 No Waiver Except by Notice in Writing

No right under this Agreement is waived or deemed to be waived except by notice in writing signed by the party waiving the right.

8.2 No Waiver of Subsequent Breaches

A waiver by one party under clause 8.1 does not prejudice its rights in respect of any subsequent breach of this Agreement by the other party.

8.3 No Waiver by Extension or Forbearance

A party does not waive its rights under this Agreement because it grants an extension or forbearance to the other party.

9 VARIATION

A variation of this Agreement will not be effective unless it is in writing and signed by the parties.

10 GOVERNING LAW AND JURISDICTION

10.1 Governing Law

This Agreement is governed by the laws of the State of Western Australia.

10.2 Jurisdiction

The parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Western Australia.

11 DEFINITIONS

The following definitions apply to the interpretation of this Agreement.

Confidential Information means any one or more of the following.

- (a) All trade secrets, ideas, know-how, concepts and information whether in writing or otherwise relating in any way to the matters described in item 1 of the Schedule.
- (b) All other information relating to the Disclosing Party and its affairs or businesses, sales, marketing or promotional information, which is not in the public domain.

Confidential Information includes (i) all information which the Receiving Party becomes aware of (as well as information which is specifically disclosed), and (ii) any item referred to above which is in the Disclosing Party's power, possession or control concerning or belonging to any other person.

Schedule means the schedule to this Agreement.

Specified Purpose means the purpose set out in item 2 of the Schedule.

SCHEDULE

1 CONFIDENTIAL INFORMATION

- 1.1 *This item requires VERY careful consideration as it describes the information which is to be protected.*
- 1.2 *The information to be protected should be clearly identified and then an accurate description of that information needs to be inserted in this item of the schedule.*
- 1.3 *Great care needs to be taken to ensure that description includes all of the information which is to be protected.*
- 1.4 *The following is included as an example of what Landgate has previously included in this item.*

These notes should be deleted from the final draft.

2 SPECIFIED PURPOSE

- 2.1 *Insert a description of the specified purpose for which the Confidential Information is being disclosed.*

These notes should be deleted from the final draft.

EXECUTED BY THE PARTIES AS AN AGREEMENT

Executed for and on behalf of the DISCLOSING PARTY

Signature

Date _____

(i)

(ii)

Print (i) name, (ii) status (eg director,
manager etc)

By signing this Agreement the Disclosing Party's
representative warrants that he / she has authority
to sign this Agreement on behalf of the Disclosing Party

Executed for and on behalf of the RECEIVING PARTY

Signature

Date _____

(i)

(ii)

Print (i) name, (ii) status (eg director,
manager etc)

By signing this Agreement the Receiving Party's
representative warrants that she / he has authority
to sign this Agreement on behalf of the Receiving Party

NOTES FOR COMPLETING THIS PRECEDENT

These notes should be deleted from the final draft of the agreement

- 1 This is a one way Confidentiality Agreement where Landgate (L) discloses information to the other party (OP). OP's details need to be included on the cover and on page 1.
- 2 If OP is also disclosing information to L, then a separate agreement should be prepared where OP is the disclosing party and L is the Receiving Party.
- 3 This precedent is based on the precedent which appears in the Encyclopaedia of Forms and Precedents. It has been reviewed by SSO. Comments from SO have been incorporated.
- 4 Steps required to complete this precedent.
 - 4.1 Include the OP details on the cover and page 1
 - 4.2 Complete items 1 and 2 of the schedule.
 - 4.3 Execution of the agreement by authorised representatives.
- 5 This precedent was prepared in May 2008 (Mark McLinden).
This precedent was last updated in May 2008 (Mark McLinden).