

Shared Location Information Platform (SLIP)

Custodian Terms and Conditions

BACKGROUND

- A The Shared Location Information Platform (**SLIP**) provides users of SLIP (**Users**) with on-line access to location information published on SLIP by various data custodians.
- B Landgate, in cooperation with the Western Australian Land Information System (**WALIS**) is the designated service provider of SLIP on behalf of the State of Western Australia.
- C The Custodian has information it wants to publish on SLIP.
- D This Agreement sets out the terms and conditions between the Service Provider and the Custodian in relation to the operation of SLIP.

AGREEMENT

1 PUBLISHING THE CUSTODIAN'S DATA ON SLIP

- 1.1 The Service Provider and the Custodian agree to publish the Custodian's Data on SLIP.
- 1.2 "Custodian's Data" means the information, data or datasets that the Custodian has agreed with Landgate to publish on SLIP, as searchable on: <http://data.wa.gov.au> and varied from time to time in accordance with this Agreement.

2 THE SERVICE PROVIDER'S RESPONSIBILITIES

- 2.1 The Service Provider's responsibilities in relation to the provision of SLIP are the following.
 - (a) Arrange for the Custodian's Data to be published on SLIP.
 - (b) Provide the SLIP systems and infrastructure to enable Users to have online access to the Custodian's Data in accordance with the Access Levels the Custodian has granted.
 - (c) Ensure the proper control and management of SLIP and provide SLIP terms and conditions which will seek to limit the liability of the Service Provider, the Custodian and the WA Government.
 - (d) Provide reasonable ongoing support and maintenance of the SLIP system, subject to the availability of appropriate funding and resources.
 - (e) Ensure reasonable availability of service support when resolving a SLIP system related incident, during normal business hours, subject to the availability of appropriate funding and resources.
 - (f) Support WALIS by assisting the Custodian to analyse and address any issues with publishing the Custodian's Data on SLIP, including the addition, modification or removal of data from SLIP.
 - (g) Comply with any relevant WALIS policies and procedures, for the management of location data.
- 2.2 The Service Provider's responsibilities to the Custodian are the following.

- (a) Act as the Custodian's non-exclusive agent in accordance with the terms of this Agreement for the purposes of representing, promoting, marketing and distributing the Custodian's Data and using the name of the Custodian in relation to the marketing and promotion of SLIP.
- (b) Maintain the confidentiality and integrity of the Custodian's Data within SLIP and take reasonable precautions to protect the Custodian's Data from misuse, loss and from unauthorised access, modification or disclosure.
- (c) If the Service Provider receives any Freedom of Information (**FOI**) applications concerning the Custodian's Data (the **FOI Application**), then the Service Provider will refer the FOI Application to the Custodian for a response.

3 CUSTODIANS RESPONSIBILITIES

- 3.1 The Custodian will make the Custodian's Data available to be published on SLIP.
- 3.2 The Custodian agrees that it has entered into this Agreement in good faith with the Service Provider to publish the Custodian's Data on SLIP.
- 3.3 The Custodian's responsibilities in relation to the operation of SLIP are the following.
 - (a) Ensure it has sufficient ownership, authority, approval or control of the Custodian's Data to enable it to be published on SLIP.
 - (b) Ensure the Custodian's Data is accurate and fit for use and publishing on SLIP.
 - (c) Provide SLIP with the latest and most accurate version of the Custodian's Data which it has available at the time of publication, including all relevant metadata.
 - (d) Provide a suitable arrangement or system, for the continual supply of the Custodian's Data to SLIP via interfaces made available to the Custodian or other service.
 - (e) Provide up-to-date Custodian Data in the update frequency notified to the Service Provider and Users.
 - (f) Select the appropriate Access Level and appropriate licence regime for the Custodian's Data that is published on SLIP. This is entirely the Custodian's decision and the Custodian accepts sole responsibility for it.
 - (g) Provide during normal business hours, support for Users of the Custodian's Data and make every reasonable effort to analyse any incidents regarding the Custodian's Data within 14 days of the incident being identified by the Service Provider, a Custodian or User.
 - (h) Comply and act in accordance with:
 - (i) any reasonable procedures, policies, direction or instruction from the Service Provider, including in regards to the usage, service, system and storage capacity of SLIP; and
 - (ii) all ancillary SLIP Custodian documentation accessible at: <http://data.wa.gov.au>, as created by the Service Provider and varied from time to time.
 - (i) Ensure that any licence terms relating to SLIP and the SLIP software are not obscured, altered, or removed.
 - (j) Ensure that any information required to access SLIP (such as login IDs and passwords) will be securely treated as confidential information and not disclosed to anyone other than the Custodians authorised personnel.

4 WALIS OFFICES RESPONSIBILITIES

- 4.1 The WALIS Office's responsibilities in relation to SLIP are the following.
 - (a) Assist the Custodian to publish the Custodian's Data on SLIP (with support from the Service Provider).

- (b) Provide, upon request of the Custodian, copies of WALIS policies and procedures.
- (c) Assist in the resolution of any disputes between the parties.

5 SLIP SYSTEM AND DATA MANAGEMENT RESPONSIBILITIES

- 5.1 The Custodian must give the Service Provider at least 14 days prior written notice of any planned, potential or actual changes to any of the Custodian's Data and at least 3 months prior written notice of its intention to stop publishing any of the Custodian's Data on SLIP.
- 5.2 If the Custodian's Data does not meet the required SLIP format, then it will not be possible to publish that data on SLIP. If this occurs, the Custodian must:
 - (a) prepare their Custodian's Data in line with the required SLIP format prior to publishing; or
 - (b) make a written request for the Service Provider to provide assistance, where reasonably possible, in formatting their Custodian's Data to the required format.
- 5.3 If a party becomes aware of any incident or change with SLIP or a Custodian's Data, then (i) the party agrees to notify the other party of the incident or change as soon as practicable, and (ii) work towards the resolution of any incident or change under its control.
- 5.4 the Service Provider will endeavour to give 14 days prior written notice to the Custodian of any required maintenance or issue that may affect the availability of SLIP. In the event of any major technical incident that may affect the availability of SLIP, the Service Provider will endeavor to give notice of this and any maintenance it will perform as soon as practicable.
- 5.5 the Service Provider will (i) monitor and manage the SLIP system, including any storage or usage limitations, (ii) notify the Custodian should any issues arise as soon as practicable, and (iii) take any action reasonably required to manage the SLIP system.
- 5.6 the Service Provider undertakes electronic backup of its computer-based business systems for its own purposes, but does not provide backup and recovery of the Custodian's Data or reports.
- 5.7 The Custodian must implement its own backup, archive and recovery facilities and procedures for its Custodian's Data.
- 5.8 The Custodian acknowledges that its Custodian's Data published to SLIP may be stored by SLIP software providers in data centres that may be distributed globally.

6 ACKNOWLEDGEMENT OF RISK

- 6.1 The Custodian acknowledges and agrees to the following.
 - (a) SLIP is provided by the Service Provider in good faith on an "as is" basis
 - (b) The Custodian should obtain specific professional advice before making any SLIP-related decision.
 - (c) The Custodian publishes the Custodian's Data on SLIP at its own risk;
 - (d) The Service Provider does not guarantee or make any warranty that SLIP is error free or virus free.
 - (e) The Service Provider does not guarantee or make any warranty regarding the continuity or uninterrupted availability of SLIP, the provision of SLIP services or support.
 - (f) Subject to **clause 8**, the Service Provider will not be liable for any loss or damage occasioned to the Custodian by publishing the Custodian's Data on SLIP, and the Service Provider is released from any claim for any such loss or damage.

7 INTELLECTUAL PROPERTY

- 7.1 Other than Intellectual Property Rights provided by any SLIP software provider (including any third party Intellectual Property Rights imbedded in any SLIP software provider's software), the Service Provider is the owner of all Intellectual Property Rights in SLIP on behalf of the State. The Custodian does not acquire any Intellectual Property Rights in SLIP.

- 7.2 The Custodian warrants that it is the owner of all Intellectual Property Rights in the Custodian's Data. The Custodian grants the Service Provider and any SLIP software provider a licence to use (and if necessary, process) the Custodian's Data solely for the purposes of publishing the Custodian's Data on SLIP. The Service Provider will, where possible, ensure that Users are not able to access Custodian's Data other than in accordance with the Access Levels in **item 4 of the Schedule**.
- 7.3 "Intellectual Property Rights" means all intellectual property rights including copyright, trademarks, 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.

8 LIMITATION OF LIABILITY

- 8.1 To the fullest extent permitted by law, the Service Provider will not be subject to any liability (contractual, tortious (including negligence) or otherwise) to the Custodian or anyone else for any loss or damage (including consequential loss or damage), however caused which may be directly or indirectly suffered in connection with this Agreement, including the publication of the Custodian's Data on SLIP or any suspension or termination of the publication of the Custodian's Data on SLIP. This general disclaimer is not restricted or modified by any of the following specific disclaimers.
- 8.2 Subject to this **clause 8**, the total liability of the Service Provider to the Custodian for all claims, in aggregate, is limited to the amount paid or payable by the Custodian to the Service Provider pursuant to this Agreement – if no amount is paid, then the total liability is zero.
- 8.3 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 SLIP is given or assumed by the Service Provider.
- 8.4 Pursuant to section 64A of the Australian Consumer Law, this **clause 8.4** 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, the Service Provider'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 the Service Provider'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 Service Provider's option;
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- 8.5 This **clause 8.5** 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 the Service Provider for any breach by it of such implied term is limited, at the Service Provider's option, to any one or more of the remedies referred to in **clauses 8.4(a) or 8.4(b)** above.
- 8.6 This clause will survive termination of this Agreement.

9 RELEASE AND INDEMNITY

- 9.1 To the fullest extent permitted by law, the Custodian irrevocably releases the Service Provider from any claim that the Custodian may have against the Service Provider.

- 9.2 The Custodian must indemnify and keep indemnified, hold harmless and defend the Service Provider in respect of all claims, demands, actions, suits and damages for loss, damage or injury, including indirect or consequential loss in connection with or arising from:
- (a) The publication of the Custodian's Data on SLIP and the use or reliance by any person on any of the Custodian's Data, whether or not any such reliance is notified to the Service Provider;
 - (b) any unlawful or negligent act or omission or wilful misconduct of the Custodian arising in relation to this Agreement;
 - (c) any breach of this Agreement, tort or negligence by the Custodian in connection with this Agreement;
 - (d) any breach of Intellectual Property Rights by the Custodian or any third party to whom the Custodian provided access, either deliberately or inadvertently, to any Intellectual Property Rights; and
 - (e) any legal costs, charges and expenses arising from this **clause 9.1**,
- except to the extent such loss is caused by the Service Provider's negligence or breach of this Agreement.
- 9.3 This clause will survive termination of this Agreement.

10 INSURANCE

- 10.1 The Custodian 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 a minimum amount of \$10,000,000 per claim; and
 - (c) professional indemnity insurance covering a Licensee's liability arising out of any act, neglect, error or omission made or done by or on behalf of the Custodian, its employees, contractors, agents, members, customers, clients or consultants in connection with this Agreement for a minimum amount of \$5,000,000 per claim.
- 10.2 The Custodian must, on request by the Service Provider, produce reasonable evidence, including the provision of certificates of currency to verify that the Licensee has the insurance required under this Agreement.
- 10.3 Any policy of insurance must be in a form that does not allow the insurer to exercise rights of subrogation against the Service Provider.
- 10.4 The Custodian must notify the Service Provider immediately of any cancellation or non-renewal of any insurance policies in connection with this Agreement.
- 10.5 Where the Service Provider reasonably considers that additional insurance or increased limits to existing insurance may be necessary, the Custodian must obtain such additional insurance or increase its limits as required.

11 COSTS

- 11.1 The Custodian will bear any cost it incurs in connection with publishing its Custodian's Data on SLIP.
- 11.2 If the Custodian wants to collect a SLIP User fee for a User to access its Custodian's Data via SLIP this must be agreed in writing with the Service Provider. If approved, additional charges may be levied on the Custodian by the Service Provider, and the Custodian is solely responsible for the cost, pricing, licensing and collection of any User fee unless otherwise agreed in writing between the Custodian and the Service Provider.
- 11.3 The Service Provider may charge the Custodian a fee for publishing the Custodian's Data on SLIP. Any such fee must be agreed in writing by the Service Provider and the Custodian at least 28 days before the commencement of the fee.

12 TERMINATION AND SUSPENSION

- 12.1 Either party may suspend or terminate the publication of data on SLIP at any time by giving the other party 3 months written notice.
- 12.2 The Service Provider may suspend or terminate the Custodians access or publishing of its Custodian's Data on SLIP immediately, if:
- (a) any operational matters or issues arise, including any limitations or issues with the SLIP software, SLIP software provider, SLIP storage capacity, any SLIP usage limitations or any reasonable access concerns of the Service Provider or a Custodian;
 - (b) the term, clauses or obligations of any agreement between the Service Provider and the SLIP software provider requires the Service Provider or Custodian to cease using the SLIP software for any reason;
 - (c) the Service Provider ceases to operate or manage SLIP;
 - (d) the Custodian commits a breach of this Agreement, including if the Custodian performs an activity not permitted by this Agreement or otherwise uses SLIP in an unauthorised manner;
 - (e) the Custodian's corporate structure, management, control or ownership changes; and
 - (f) the Custodian is wound up, becomes insolvent or has a liquidator, provisional liquidator, administrator, receiver, manager or receiver and manager appointed.

13 FORCE MAJEURE

- 13.1 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.
- 13.2 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.
- 13.3 Neither party will be in breach of its obligations which it cannot fulfil as a result of an event contemplated in **clauses 13.1 and 13.2**, provided each party notifies the other as soon as a party believes an occurrence has occurred of the type contemplated in **clauses 13.1 and 13.2**.

14 DISPUTE RESOLUTION

- 14.1 Before resorting to external dispute resolution mechanisms, the parties must attempt to settle by negotiation in good faith any dispute in relation to these Terms and Conditions and where practicable, each party will refer the matter to personnel who have authority to intervene and direct some form of resolution.
- 14.2 Either party may give the other party formal notice in writing of a dispute. If the dispute is not settled within 10 business days, it must be submitted to the dispute resolution process described in this clause.
- 14.3 It is agreed by both parties that the dispute resolution process will first consist of mediation.
- 14.4 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.
- 14.5 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.
- 14.6 If the dispute remains unresolved after 30 days, either party may then have recourse to the courts.

15 NOTICES

- 15.1 Any notice given under these Terms and Conditions 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 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 e-mail, when the email enters the recipient's e-mail server.

16 GENERAL TERMS

- 16.1 At least 7 days before the Custodian makes any SLIP-related announcement, the Custodian will discuss the announcement with the Service Provider.
- 16.2 A party which becomes aware of confidential information which is owned by the other party will not disclose the confidential information without the prior written approval of the other party unless required by law.
- 16.3 The parties agree to comply with all relevant WA or Commonwealth privacy legislation and policies as applicable to the Custodian's Data and SLIP.
- 16.4 Any variation of the terms and conditions of this Agreement will only be binding if in writing and signed by both parties.
- 16.5 These terms and conditions constitute the entire agreement between the parties and supersedes any previous agreements or representations, written or oral in relation to SLIP.
- 16.6 Waiver by either party of any default or breach of these terms and conditions will not constitute a waiver of any other or subsequent default or breach.
- 16.7 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.
- 16.8 The rights provided under the terms and conditions are cumulative with and not exclusive of the rights provided by law or available in equity independently of the terms and conditions.
- 16.9 The Custodian must not assign or transfer its rights under the terms and conditions unless it has first obtained the written consent of the Service Provider which may be withheld in its absolute discretion.
- 16.10 If the Custodian is a corporation (other than a public company as defined in the Corporations Act 2001 (Cth)) the Custodian is deemed to have assigned the acceptance of the terms and conditions if:
- (a) anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Custodian to another person; or
 - (b) there is any change in control of the Custodian within the meaning of the Corporations Act 2001 (Cth).
- 16.11 The Custodian is not by virtue of this Agreement a partner, joint venturer, employee or agent of the Service Provider, nor does the Custodian have any power or authority to bind or represent the Service Provider, or represent itself as such.
- 16.12 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 the Service Provider's election.

16.13 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.

17 INTERPRETATION

In this Agreement, unless the contrary intention appears:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (d) headings and bold print are for reference only and do not affect interpretation;
- (e) if any form of the word 'include' is used, it is to be read as if followed by the words 'without limitation';
- (f) 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;
- (g) where a party to this Agreement is more than one person, they are jointly and severally liable under the terms of this Agreement;
- (h) where time is to be calculated by reference to a day or event, that day or event is included;
- (i) 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;
- (j) a 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;
- (k) 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 the Service Provider, unless in writing.
- (l) a reference to:
 - (i) business days means any day other than a Saturday, Sunday or public holiday in Western Australia.
 - (ii) a person includes a company, partnership, joint venture, unincorporated association, corporation, government or statutory body or authority, or body corporate;
 - (iii) a person includes the person's legal personal representatives, executors, administrators, successors and permitted assigns;
 - (iv) a party includes that party's officers, employees, contractors, agents, invitees and board members;
 - (v) a statute, ordinance, code or other law includes regulations, by-laws and rules and any successive statutory instrument as modified or replaced;
 - (vi) any agreement or document is a reference to that agreement or document as amended, supplemented or replaced from time to time;
 - (vii) a currency, including dollars or \$ is to the Australian currency, unless otherwise stated;
 - (viii) a right includes a benefit, remedy, discretion or power;
 - (ix) time is to Western Standard Time, Perth, Western Australia;

SCHEDULE

Item 4 Access Levels

Access Level	Licence Regime
Public	<p>If you select Public, your Custodian's Data is freely available and open to any User.</p> <p>It is your sole responsibility to choose an appropriate licence that governs the use of your Custodian's Data.</p> <p>WALIS endorses that the following two Creative Commons* licenses can be used for licensing Custodian's Data accessible in Public:</p> <ul style="list-style-type: none"> • Creative Commons Attribution Licence (CC BY); • Creative Commons Attribution Non-Commercial Licence (CC BY-NC)
Private (Restricted and Subscription)	<p>If you select Private, your Custodian's Data is only available to a User once you, the Custodian approves the grant of access.</p> <p>It is your sole responsibility for approving access to Users and choosing an appropriate licence that governs the use of your Custodian's Data (including the use of Creative Commons* if appropriate).</p> <p>This Access Level is suitable for:</p> <ol style="list-style-type: none"> 1. Restricted or sensitive datasets, where a Custodian wants to retain control of who can access their Custodian's Data; and/or 2. Subscription datasets, where a Custodian wishes to charge a User fee before they grant access to their Custodian's Data.

* Further information on the suite of Creative Commons that may be used by a Custodian can be accessed at:

<http://creativecommons.org.au/learn-more/licences>