



**HINCHINBROOK
SHIRE COUNCIL**

HSC

LICENCING AGREEMENT

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Privacy Collection Statement:

You are providing personal information which will be used for the purpose of delivering services and carrying out council business.

Your personal information is handled in accordance with the *Information Privacy Act 2009* and will be accessed by persons who have been authorised to do so. Your information will not be given to any other person or agency unless you have given us permission or the disclosure is required by law.

THIS AGREEMENT

Dated

BETWEEN: The Hinchinbrook Shire Council of 25 Lannercost Street, Ingham in the State of Queensland.

AND: _____ of

The Hinchinbrook Shire Council

Address: Chief Executive Officer
Hinchinbrook Shire Council

Postal Address: PO Box 366
Ingham QLD 4810

Attention: Roslyn Di Mauro

Telephone: (07) 4776 4720

Facsimile: (07) 4776 3233

You

Postal Address:

Attention:

Telephone:

Mobile:

Email:

DATASET SUPPLY AGREEMENT / REFERENCE SCHEDULE

Conversion Fee

Data

Data Format

Expiry Date

Project

(As detailed in writing by You as set out in the attached Request for Supply of Data)

Project Data

(Data created by the Licensee or a Third Party in the course of the Project)

Third Party/s

Any other person approved by Council in writing, (which approval may be granted conditionally or refused in the absolute discretion of Council)

Accordingly the Parties have executed this Agreement on the dates appearing below.

SIGNED for and on behalf of the **HINCHINBROOK SHIRE COUNCIL** On

Matthew Schembri
Infrastructure Engineer

.....
(signature)

Who is a duly authorised officer In the presence of:

.....
(signature of witness)

.....
(print name of witness)

SIGNED for and on behalf of _____ on _____

.....
(full name)

.....
(designation)

.....
(signature)

Who is a duly authorised officer In the presence of:

.....
(signature of witness)

.....
(print name of witness)

RECITALS

- A. The Council is the custodian of various data and information.
- B. The data and information is packaged by Council into Datasets.
- C. You have requested that the Council provides you with certain Datasets (*the Datasets*).
- D. You and the Council have agreed to enter into this agreement to record the terms upon which the Council will provide the Datasets to You.

NOW THE PARTIES AGREE AS FOLLOWS –**(a) Interpretation**

- In this Agreement unless the context otherwise requires or the contrary intention appears, the following terms will have the meanings assigned to them –

“**Agreement**” means this document and all schedules to this document.

“**Council**” means the Hinchinbrook Shire Council, and where the context permits the expression includes the Council’s servants or agents.

“**Datasets**” means the datasets specified in the Reference Schedule.

“**Date of this Agreement**” means the date referred to on page 3.

“**Fee**” means the amount payable by you for the provision of the Datasets under this Agreement

“**GST Law**” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and all associated laws.

“**Laws**” means all Statutes, orders, ordinances, regulations and local laws and all requirements and orders lawfully given or made by any public body or authority relating to the services to be provided under this agreement.

“**Parties**” means both the Hinchinbrook Shire Council and You.

“**Term**” means the Term described in the Reference Schedule.

- A reference to a person includes a reference to corporations and other entities recognised by law.
- In this Agreement the Table of Contents has been inserted for convenience of reference only and is not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this Agreement.
- A reference to a statute, regulation, ordinance or local law will be deemed to extend to all statutes, regulations, ordinances or local laws amending, consolidating or replacing them.
- In this Agreement the headings to the clauses have been inserted for convenience of references only and are not intended to be part of or to affect the meaning or interpretation of any of the terms and conditions of this Agreement.
- The singular includes the plural and vice versa.
- Words importing one gender will include a reference to all other genders.
- A covenant or agreement in the part of two or more persons will be deemed to bind them jointly and severally.
- A reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment to this Agreement and includes any amendments to them made in accordance with this Agreement.
- Where under or pursuant to this Agreement the day on or by which any act, matter or thing is to be done is not a business day, such an act, matter or thing may be done on the next proceeding business day.
- In the case of any inconsistency between the schedules and a clause contained in this Agreement, the provisions of the clause will prevail to the extent of any inconsistency.
- A reference to any law will be deemed to extend to all legislation amending, consolidating or replacing the same.
- Where a word or phrase is given a particular meaning in this Agreement, other parts of speech and grammatical form of that word or phrase have a corresponding meaning.
- The words “includes” and “including” are not words of limitation.

(b) Term of Agreement

- This Agreement starts on the latter of:

- The day that the last Party signs the Agreement; or
- The Commencement Date; and

unless sooner terminated in accordance with this Agreement or by mutual arrangement between the parties continues until the earlier of:

- One year after the Commencement Date; or
- The Termination Date.

(c) Payment

- In consideration of the Council agreeing to provide the Datasets to you under this Agreement and subject to the Council providing to you tax invoices as required under the GST Law, you must pay to the Council the Fee plus GST.
- (d) GST**
- Unless otherwise stated, all payments made by the Council or You under this Agreement are calculated without regard to GST.
 - If a payment by either Party under this Agreement is for a supply as defined under the GST law by one party to the other under this Agreement upon which the other Party must pay GST, and the payee gives the payer a tax invoice as defined under the GST Law for the amount increased by the GST, the payee must pay the increased amount.
- (e) Council will supply Datasets**
- The Council agrees to supply you with the requested datasets, on the terms and conditions stated in this agreement.
 - You agree to pay for the supply of the Datasets as stated in this agreement.
 - You agree that you will use the Datasets for the nominated project only, and that you will make no other use of the Datasets without first obtaining the Council's written permission. The Council will have complete discretion when deciding whether that permission will be withheld, granted, or granted on conditions.
- (f) Intellectual Property Rights**
- You acknowledge that the Council is the owner of the intellectual property (including copyright) in the Datasets.
 - This agreement does not assign any interest in the intellectual property to You.
 - The Datasets are commercially confidential and must not be released or disclosed to a third party except in accordance with this agreement.
- (g) Format**
- Unless you make a specific request, pay the Conversion Fee, and Council agrees to supply the Data in that other format, the Council will supply the Data in the following formats only; ESRI, MapInfo or AutoCAD DWG/DXF formats.
- (h) Copies of Datasets**
- You may only make copies of the Datasets for Your own use in the nominated project.
 - You must return the Datasets to Council (with any amendments which will become the property of Council) upon determination of this agreement.
 - You must destroy all copies of Datasets upon determination of this agreement.
 - No intellectual property in the Datasets passes to You. You must not sell, license or distribute the Data to any 3rd Party except pursuant to this agreement, or do any other act that contravenes the Council's intellectual property rights.
- (i) Disclosure to Third Parties**
- The Council will record in the Reference Schedule whether it consents to the Datasets being made available by You to third parties, and if so, will nominate the third parties to whom You may provide the Datasets. You must not provide the Datasets to third parties other than those approved by the Council.
 - If the Council has given its written consent allowing You to release or disclose the Dataset to a third party then You:
 - indemnify the Council from any loss or damage suffered by the Council resulting from the use of the Dataset by the third party; and
 - must ensure that an appropriate acknowledgement and copyright notice is prominently displayed on all copies of extracts from the Dataset including the words "*Base Dataset/Dataset reproduced with permission of Hinchinbrook Shire Council.*" The Council will provide logo in digital format upon request.
 - You must return the Dataset to Council (with any amendments which will become the property of Council) upon determination of this agreement.
 - You must destroy all copies of Datasets upon determination of this agreement.
 - No intellectual property in the Datasets passes to You. You must not sell, license or distribute the Data to any 3rd Party except pursuant to this agreement, or do any other act that contravenes the Council's intellectual property rights.

(j) Indemnity

- The Council does not warrant the accuracy of the Data and You must verify the accuracy of the Data before placing reliance on the Data.
- From the date of this agreement, You –
 - (k) indemnify; and
 - (l) release and discharge,

the Council from and against all actions, proceedings, claims, demands, costs, losses, damages and expenses which may be brought against or made upon the Council, or which the Council may pay, sustain or be put to by reason of, or in consequence of or arising from or in connection with the use of the Data by You or any other person or entity obtaining the Datasets from you, except to the extent that such was caused or contributed to as a result of the negligent act or omission or the wilful default of the Council.

(m) Dealings

You must not transfer, sub-contract, let or in any manner deal with your obligations under this Agreement without obtaining the consent in writing of the Council. Any such consent will be at the absolute discretion of the Council.

(n) Termination

- If You fail to observe, perform or fulfil any of the terms and conditions contained in this Agreement and that failure has not been remedied within 7 days from the date of the Council giving written notice to You, then You will be in default and the Council may –

1.1.1 by written notice to You terminate this Agreement in which case this Agreement will terminate on the date that the notice is received by You; or

1.1.2 Carry out any work, make such payment or undertake such activity as is reasonably necessary to remedy the particular default and recover from You the costs incurred by the Council as a liquidated debt.

- You must cease using the Data in any form whether modified or merged with other material and destroy all transferred Data, and Your license to use the Data is immediately revoked.

(o) Yielding Up

At the expiration or sooner termination of this Agreement, then You must yield up the Datasets together with any developments you have made from them.

(p) Compliance with Laws.

You must comply with all Laws relating to the services you are to perform under this Agreement. You must not do or omit to do any act or thing whereby the Council may become liable to pay any penalty imposed or to bear the whole or any part of any expenses incurred under any Law

(q) Severability

- If anything in this Agreement is unenforceable, illegal or void, then it is severed and the rest of this Agreement remains in force.

(r) Notices

- Notices under this Agreement may be delivered by hand, by registered mail, or by facsimile to the addresses specified in this clause or any substitute address as may have been notified in writing by the relevant addressee from time to time.
- Notice will be deemed to be given –
 - (a) 2 Business days after deposit in the mail with postage prepaid;
 - (b) when delivered by hand; or
 - (c) if sent by facsimile transmission, upon an apparently successful transmission being noted by the sender's facsimile machine prior to close of business at 5:00pm. Facsimile transmissions received after 5:00pm will be deemed to be received at the start of the next working day,

as the case may be.

- The address for each Party is recorded in the Reference Schedule.

(s) Governing Law

This Agreement will be governed by and construed according to the law of the Council of Queensland and the Parties agree to submit to the jurisdiction of the courts of the Council of Queensland.

(t) Waiver

No right under this Agreement will be deemed to be waived except by notice in writing signed by the Party waiving that right.

(u) Variation

This agreement may not be varied at any time except by a written agreement executed by all Parties.

(v) Costs

- Each Party will pay its own costs of and incidental to the negotiation, preparation and execution of this Agreement.
- You must pay any duty payable on this Agreement.

(w) Execution

- The Parties agree that if this Agreement is not executed by all Parties on the same date, this Agreement will commence on and from the last of the dates of execution.
- The Parties will execute copies of this Agreement with each Party retaining an original copy.

(x) Entire Agreement

This Agreement constitutes the entire agreement between the Parties. Any prior arrangements, agreements, warranties, representations or undertakings are superseded.