



Title Product Broker Agreement

Version: **190314**

Agreement number: **TBA**

Between

Western Australia Land Information Authority (Landgate)

And

Customer Name (Licensee)

Prepared by: Pricing & Licensing, Landgate

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SAMPLE

PARTIES

This Agreement is made on the date shown in **Item 1**, between Landgate and the Broker, as specified in **Item 2**.

BACKGROUND

- A. Landgate is the owner of (or is entitled to use) the Intellectual Property in the Title Products.
- B. Landgate wishes to provide additional access to the Title Products by making them available through brokers, who have wider market networks.
- C. Landgate has accepted the Broker's offer to become an authorised Broker of the Title Products, subject to the Broker and Landgate executing this Agreement.
- D. Landgate has agreed to provide the Broker with a Web Service to access the Landgate System using a unique Broker ID to facilitate the Broker's supplying the Title Products to End Users on behalf of Landgate.

AGREED TERMS

1 Appointment of Broker

- 1.1 The Broker is appointed as Landgate's non-exclusive agent, limited to perform the Broker's Duties, for the Term and in accordance with this Agreement including any Special Conditions.
- 1.2 The Broker accepts the appointment referred to in clause 1.1 in return for access to the Landgate System as authorised by this Agreement and opportunities in respect of the Broker's Outputs.
- 1.3 Landgate reserves its rights to:
 - (a) continue to supply the Title Products direct to any customer itself;
 - (b) appoint other entities as brokers of the Title Products;
 - (c) withdraw or vary any Title Product and offer new Title Products to the Broker; and
 - (d) vary any or all of the IT System Requirements, the information content and format of the Title Products, the Regulated Fee for the Title Products and any fees and charges.

2 Broker's Establishment Conditions

- 2.1 As soon as practicable and in any event no later than 90 days after the Commencement Date, the Broker must effect and maintain for the Term:
 - (a) the Broker's System in accordance with the IT System Requirements as specified in **clause 13**;
 - (b) payment arrangements through an EBIS account;
 - (c) an Access Account for Landgate to access the Broker System, for which both parties will ensure there is no charge or fee payable for any access, related usage or orders of Title Products or Broker's Outputs.
- 2.2 Landgate, its officers, employees and agents may use the Access Account to verify the use and delivery of Title Products and compliance by the Broker, in accordance with the terms and conditions of this Agreement.
- 2.3 The Broker must provide sample copies of the Broker's Outputs and the Title Products, as offered by the Broker to its End Users, within 14 days of a request from Landgate.

3 Landgate Establishment Procedures

- 3.1 As soon as practicable after the Broker has complied with **clause 2**, Landgate will:

- (a) record the Broker as an authorised broker entitled to access the Title Products;
 - (b) establish a link to Landgate's Web Service;
 - (c) supply the Broker with a Broker ID and such other user names and passwords as Landgate may determine are required from time to time to carry on the Broker's Duties; and
 - (d) establish an EBIS account for the Broker.
- 3.2 Landgate may, if requested by the Broker, provide assistance to the Broker in the development and testing of the Broker's System to ensure it complies with the IT System Requirements.

4 Access to the Title Products

- 4.1 Once the parties have complied with **clauses 2 and 3**, Landgate will provide the Broker with access to the Title Products through the Web Service, for the Broker to carry on the Brokers Duties.
- 4.2 The Broker may only access, order or use Title Products as is required for the performance of its obligations under this Agreement in respect of the Broker's Duties only.
- 4.3 Landgate will provide the Broker access to the Web Service 24 hours per day, seven days per week, subject to Landgate's System Downtime and scheduled and emergency maintenance.
- 4.4 Notwithstanding **clause 4.3**, Landgate may temporarily modify the hours of operation of the Web Service (during which time the Title Products may be inaccessible), and will provide the Broker notice as soon as practicable.

5 Use of the Title Products

- 5.1 The Broker must:
- (a) not access, order or use Title Products for its own Internal Business Use unless an appropriate end user agreement (separate to this Agreement) has been entered into with Landgate;
 - (b) supply the Title Products to End Users in the same condition as received by the Broker and in accordance with this Agreement;
 - (c) ensure that any notices relating to Intellectual Property Rights, including Landgate's trade mark or disclaimer appearing in or on the Title Products or literature relating to them, are not altered or removed;
 - (d) not alter or omit the meaning, substance, content, coordinates or spatial integrity of any Title Products;
 - (e) not store any Title Products (or any part of any Title Products) on the Broker's System or any other database, except for the purposes of **clauses 5.2**;
 - (f) not itself, (or permit any third party to) create data or other products which are the same as or substantially similar to the Title Products, or reverse engineer or rework the Title Products or by any means:
 - (i) use any outputs, whether or not from the Title Products; and
 - (ii) use any combination of data which includes the Title Products;
 - (g) not make Title Products available to a Consultant engaged by it unless the Consultant:
 - (i) is engaged solely for the purpose of assisting the Broker with the Broker's Duties and for a specific project requiring use of the Title Product where the Consultant receives no benefit from the use of the Title Product except the fee paid by the Broker; and
 - (ii) signs, lodges and has approved by Landgate, if required, a Confidentiality Deed in the form prescribed by Landgate.
- 5.2 The Broker may securely store the Title Products received for End Users on the server supporting the Broker's System for a maximum of 30 days after the relevant transaction, provided those Title Products are:
- (a) solely for the purpose of providing backup copies for the relevant End Users; and

- (b) secured so as not to be accessed or used by any unauthorised persons or for any other purpose.
- 5.3 The Broker may combine the Title Products (as a whole) with the Broker's Output, provided that by doing so nothing will:
- (a) alter the format, meaning or substance of any of the Title Products supplied by Landgate;
 - (b) derogate or detract from the legal rights of Landgate in the Title Products or any data derived from the Title Products; and
 - (c) entitle the Broker to keep a copy of any portion of the Title Products or any data derived from the Title Products, on the expiration or termination of this Agreement for any reason, except for the purposes of **clauses 5.2**.

6 Brokers Obligations

- 6.1 The Broker must:
- (a) comply throughout the Term with any warranties and representations made in respect of Landgate's Qualitative Criteria
 - (b) always act ethically in accordance with good corporate governance and act in good faith at all times towards Landgate and provide assistance and co-operation as practicable;
 - (c) at its own cost, comply with all State and Commonwealth laws relevant to this Agreement, including any Privacy Legislation;
 - (d) immediately advise Landgate in writing of any changes to their details as shown in **Item 2** (or details of the Sub-Broker in **Item 16**);
 - (e) use its best endeavours to ensure that none of its employees, Consultants or End Users cause the Broker to breach this Agreement;
 - (f) use its best endeavours to promote the Title Products and to develop and grow the market to maximize the supply of Title Products to End Users;
 - (g) share any information with Landgate, which is likely to benefit Landgate in the marketing, use or supply of the Title Products;
 - (h) do all things within its power to prevent the unauthorised use or disclosure of the Title Products and any related information;
 - (i) ensure the Title Products are only used for lawful purposes and in ways that are consistent with this Agreement, the TLA and the *Land Information Authority Act 2006*; and
 - (j) clearly and prominently display the Landgate logo as provided by Landgate from time to time on the Broker's website and state it is a Landgate Authorised Broker of Title Products.
- 6.2 The Broker must not:
- (a) permit itself or any other person to carry on the Broker's Duties, other than as expressly provided for in this Agreement;
 - (b) demean, defame or otherwise denigrate Landgate;
 - (c) introduce any virus, error or defect into, or otherwise contaminate or corrupt, or cause any instances of System Downtime for Landgate; and
 - (d) use or permit to be used, other than in accordance with this clause, the logo of Landgate or any modification thereof, or any other Landgate trade mark, without the prior written consent of Landgate.

7 Regulated Fees

- 7.1 The Broker must charge the Regulated Fee for the Title Products, although the Broker may apply additional charges for the Broker's Outputs.

8 Payments and GST

- 8.1 The Broker must pay to Landgate:
- (a) all fees and charges and in the manner specified in **Item 10**;
 - (b) all Regulated Fees specified in **Item 11** for all Title Products provided to the End User; and
 - (c) all taxes, duties or other governmental charges arising out of or levied in respect of this Agreement, the Title Products or any goods or services supplied pursuant to this Agreement.
- 8.2 The Broker must complete all forms required to set-up an EBIS account and accept Landgate invoices sent to the Broker's nominated email address.
- 8.3 Landgate will issue an invoice to the Broker as soon as practicable following the end of the relevant billing period and the Broker must pay any fees and charges and the Regulated Fees payable, by the due date specified in Landgate's invoice.
- 8.4 The Broker acknowledges that it must be registered for the GST at the Commencement Date and the Broker will notify Landgate if it ceases to be registered for GST.
- 8.5 Landgate acknowledges that it is registered for GST at the Commencement Date and Landgate will notify the Broker if it ceases to be registered for GST.
- 8.6 All amounts referred to in this Agreement are GST exclusive and all calculations will be made without regard to GST, unless otherwise stated.
- 8.7 The Broker must pay Landgate (at the same time and in the same manner as the Broker is obliged to pay for the supply) the amount of any GST which Landgate pays or is liable to pay on a supply (as that term is defined in the GST Act), in addition to the consideration payable for that supply.
- 8.8 Landgate will issue an adjustment for the Broker, for any adjustment event that occurs.
- 8.9 If the Broker breaches this clause then Landgate may, without limitation, in its absolute discretion, invoke the processes specified in **clause 31**.

9 Review of Fees and Charges and Regulated Fees

- 9.1 Landgate may vary any of the fees and charges and the Regulated Fees specified in this Agreement.
- 9.2 Any fees and charges specified in **Item 10** will:
- (a) be reviewed and increased if applicable on the relevant CPI Review Date;
 - (b) be increased by a factor equal to the percentage increase in the annual CPI in the 12 month period preceding the relevant CPI Review Date; and
 - (c) not be less than the fees and charges payable immediately prior to the relevant CPI Review Date.
- 9.3 Regulated Fees will be varied from time to time in accordance with changes in those prescribed for Title Products in the Regulations.
- 9.4 Landgate will use its best endeavours to provide at least 30 days' notice of any variation to the fees and charges or Regulated Fees.

10 Intellectual Property

- 10.1 The Parties acknowledge and agree that all Intellectual Property Rights in:
- (a) the Title Products;
 - (b) any data derived from the Title Products; and
 - (c) any documentation provided by Landgate to the Broker for the purposes of this Agreement,
- are the property of Landgate.

- 10.2 The Broker only acquires the right to use the Title Products in accordance with this Agreement, during the Term. The Broker does not acquire any rights of ownership in the Title Products.
- 10.3 Landgate retains the right to licence, distribute, market, sell, supply and provide the Title Products to any other person on such terms and conditions as Landgate deems fit.
- 10.4 The Broker must promptly report to Landgate any known or suspected infringement by itself or any third party of Landgate's Intellectual Property Rights.
- 10.5 Landgate agrees that this Agreement does not transfer any Intellectual Property Rights in any computer software, the Broker's Outputs or other material created by the Broker, which forms any part of the Broker's System.

11 Retention of Title

- 11.1 The Title Products remain the sole and absolute property of Landgate as legal and equitable owner, until all money due to Landgate has been paid. Title Products will however be at the Broker's, End User's or Consultant's risk from the time of delivery to them.
- 11.2 The Broker acknowledges that where it takes possession of any Title Products for delivery to End Users or Consultants or for the Broker's Duties:
 - (a) it does so as bailee for Landgate; and
 - (b) the Broker accepts the risk for those Title Products until the time they are delivered to the relevant End User or Consultant.
- 11.3 The Broker must ensure that the Title Products are readily identifiable as Landgate's when stored on the Broker's System.
- 11.4 The Broker's right to possession of the Title Products will cease if it does anything or fails to do anything which would entitle a receiver to take possession of any assets or which would entitle any person to present a petition for the winding up of the Broker.
- 11.5 Subject to Landgate providing 14 days prior notice, Landgate may enter on any Site where its Title Products are used or stored or where they are reasonably thought to be used or stored, for the purpose of examining or recovering them pursuant to this clause.
- 11.6 The Broker warrants that it is not at the time of entering into this Agreement insolvent and knows of no circumstances which would entitle any creditor to appoint a receiver or to petition for winding up, or to exercise any other rights over or against the Broker's assets.

12 Related Contract

- 12.1 The Broker must:
 - (a) not allow any End User access to any Title Product unless they have entered into an appropriate Related Contract, the terms and conditions of which have first been approved in writing by Landgate;
 - (b) ensure any variation in the terms and conditions of the Related Contract are approved in writing by Landgate if required (except for price changes or any other clauses that may be excluded in writing by Landgate) before the variations take effect; and
 - (c) take all steps necessary to enforce the Related Contract with the End User (including executing documents and legal proceedings if required).
- 12.2 The Related Contract must contain terms and conditions:
 - (a) that the End User agrees to be bound by and comply with the Broker's obligations under this Agreement in relation to the ownership of, access to, use of and dealing with the Title Product;
 - (b) that the End User must comply with the Broker's security obligations contained in this Agreement; and
 - (c) prohibiting the End User from:
 - (i) use of the Title Product for anything other than the End User's Internal Business Use;

- (ii) reproducing, supplying, on-selling, sub-licensing, disclosing or otherwise providing the Title Product in any form to any other person;
- (iii) altering the format, meaning or substance of any Title Product;
- (iv) displaying, distributing, selling, licensing, hiring, letting, trading or exposing the Title Product for sale; and
- (v) searching the Title Product, if Landgate has imposed a restriction on its search for any reason relating to Privacy Legislation or any Information Suppression Notice.

13 IT System Requirements and Maintenance

13.1 The Broker must:

- (a) undertake sufficient maintenance of the Broker's System such that its levels of service are compliant with this Agreement; and
- (b) undertake necessary improvements to the Broker's System in accordance with Landgate's reasonable requirements, including improvements recommended by any audit.

13.2 Landgate will publish IT System Requirements detailing the specifications and standards required of the Broker's System.

13.3 The Broker will be advised by Landgate of any changes to the IT System Requirements and be provided with not less than 30 days' notice of proposed changes or additions.

13.4 The Broker must implement changes to its Broker's System, in accordance with directions about the IT System Requirements, given by Landgate.

13.5 Landgate may withdraw support of obsolete or decommissioned versions of the IT System Requirements, by giving the Broker 30 days' notice.

13.6 Landgate may modify the Web Service and where it does:

- (a) will endeavour to provide at least 30 days' notice to the Broker, of such modifications as may adversely affect Title Product availability or access; and
- (b) make a test version available [in a suitable environment] of the modifications referred to in **clause 13.6(a)**, at least 30 days' prior to the proposed implementation.

14 Broker's Help Desk and Landgate's Customer Support

14.1 The Broker must, at its own expense:

- (a) make available to its End Users and Consultants a customer service help desk; and
- (b) not refer any End User enquiries to Landgate's customer support without first:
 - (i) making available the Broker's customer service help desk; or
 - (ii) contacting Landgate's Customer Support directly on behalf of the End User.

14.2 Subject to **clause 14.1**, Landgate will, at its own expense, make customer support available to the Broker during Business Hours, solely to assist the Broker with enquiries in relation to access to the Web Service.

14.3 Landgate will provide 30 days' notice of any permanent change in the hours of operation of its customer support, or the availability of particular Title Products.

15 Security

15.1 The Broker must:

- (a) effect and maintain adequate security measures to ensure that any Title Product is not used or accessed by any third party who is not permitted by this Agreement to use or have access to the same, to Landgate's reasonable satisfaction;

- (b) take all reasonable steps that a prudent operator in a similar situation would take to prevent unauthorised access, damage and interference to the Title Product, the Broker's System and Site;
 - (c) have formal procedures in place to:
 - (i) provide protection (eg Firewall) against intrusion and uncontrolled access to any Title Product;
 - (ii) prevent unauthorised downloading of Title Products before payment has been secured; and
 - (iii) ensure any Title Products are properly secured from interference when they are being transferred;
 - (d) immediately notify Landgate of any activity that may or does breach the security measures of this clause; and
 - (e) ensure that its employees, contractors, Consultants and End Users are made personally aware of and agree to comply with the Broker's security obligations contained in this Agreement, before providing them with access to any Title Product.
- 15.2 Where the Broker notifies Landgate, or Landgate otherwise becomes aware, that the Broker has not complied with the security arrangements provided in this Agreement, Landgate must notify the Broker of the non-compliance and provide the Broker 7 days to correct that non-compliance.
- 15.3 If the Broker fails to correct the non-compliance specified in **clause 15.2**, Landgate may immediately terminate, give notice of termination, suspend access to, add, alter, withdraw, redefine or otherwise amend the contents of, and/or terms of access to the Web Service.
- 15.4 The Broker agrees to only use any Title Product on the Broker's System and at the Site.
- 15.5 Landgate reserves the right to periodically test the security of any Site and the Broker's System to ensure compliance with this clause, to Landgate's reasonable satisfaction.

16 Accounts, Register and Audits

- 16.1 The Broker must:
- (a) observe, perform and comply with the reasonable requirements of Landgate and the accounting and security standards and requirements of the Auditor General and Commissioner of Taxation;
 - (b) keep full, proper and up-to-date books of account and records showing clearly all inquiries, transactions and proceedings relating to this Agreement ("**Accounts**");
 - (c) retain the Accounts for a period of 5 years after the Termination Date;
 - (d) allow any person authorised by Landgate to have access to the Accounts, take copies as required and perform an audit as required; and
 - (e) provide Landgate with the Accounts and related information arising from this Agreement, on request for a period of five years after the Termination Date.
- 16.2 The Broker must:
- (a) keep and maintain a Register from the Commencement Date and for five years after termination of this Agreement, containing the details specified in **Item 15**;
 - (b) provide the Register to Landgate for inspection within 7 days if requested by Landgate;
 - (c) permit Landgate or any person authorised by Landgate to inspect and audit the Register when and as required by Landgate; and
 - (d) vary the contents of the Register if required by Landgate, within 30 days of written notice.
- 16.3 Landgate, or any person authorised by Landgate may:
- (a) at any time monitor the Broker's use of the Title Products without notice to the Broker;

- (b) require the Broker to provide information or assistance within 14 days from the date of any notice, to determine the Broker's compliance with this Agreement; and
 - (c) subject to the provision of 14 days prior written notice, audit the Broker in accordance with the auditing standards stipulated by Landgate, and enter the Broker's premises during Business Hours and inspect any facilities, records, accounts, hardware and software to verify compliance with this Agreement and the use of the Title Products.
- 16.4 If an audit or inspection reveals the Broker is not compliant with this Agreement, including that the use of the Title Products are not compliant with this Agreement, the Broker will be required to remedy the lack of compliance, including by paying or repaying Landgate any additional fees that would have been recovered and interest thereon in accordance with **clause 31**.

17 Bank Guarantee

- 17.1 The Broker must provide Landgate a Bank Guarantee before the Commencement Date in the amount specified in **Item 14**.
- 17.2 The Broker's Bank Guarantee must:
- (a) be maintained for the Term; and
 - (b) be provided in favour of Landgate from a financial institution approved by Landgate.
- 17.3 Subject to 30 days' notice, Landgate may review the amount secured by the Bank Guarantee and request the Broker to immediately provide a revised Bank Guarantee in accordance with the reviewed amount.
- 17.4 The Broker's EBIS credit limit in relation to Title Products supplied under this Agreement will be restricted to the amount of the Bank Guarantee. The Broker must also ensure the amount owing on its EBIS account does not exceed that EBIS credit limit.

18 Insurance

- 18.1 The Broker must take out 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 policy for the minimum amount per claim as specified in **Item 13(a)**; and
 - (c) professional indemnity insurance covering a Broker's liability arising out of any act, neglect, error or omission from or done by or on behalf of the Broker, its employees, agents, members, customers, clients, Consultants or contractors in connection with this Agreement for the minimum amount per claim specified in **Item 13(b)**.
- 18.2 The Broker must produce reasonable evidence, including the provision of certificates of currency, to verify that the Broker has the insurance required under this Agreement.
- 18.3 Any policy of insurance must be in a form that does not allow the insurer to exercise rights of subrogation against Landgate.
- 18.4 The Broker must notify Landgate immediately of any cancellation or non-renewal of any insurance policies in connection with this Agreement.
- 18.5 Where Landgate reasonably considers that additional insurance or increased limits to existing insurance may be necessary, the Broker must obtain such additional insurance or increase its limits as required.
- 18.6 The Broker must purchase a special professional indemnity policy covering a run off period for a minimum of 7 years (continuing) in the event of:
- (a) cessation of the Broker's business;
 - (b) termination of this Agreement resulting from the Broker ceasing to operate, becoming insolvent or a receiver/manager, trustee in bankruptcy, administrator, or similar officer being appointed to take charge of all or part of the Broker's property;
 - (c) a petition being presented for the winding up or dissolution of the Broker; and

- (d) the Broker terminating this Agreement.

19 Confidentiality

- 19.1 The parties must not disclose Confidential Information except in the circumstances of this clause.
- 19.2 Neither party may use or make available in any form to any third party, the other party's Confidential Information, unless in accordance with this Agreement.
- 19.3 Each party must hold the other party's Confidential Information secure and in confidence, except for such Confidential Information which the disclosing party can demonstrate:
 - (a) is required to be disclosed according to the requirements of any law, stock exchange, judicial or government body;
 - (b) is or has generally become available to the public without breach of this Agreement;
 - (c) was approved for release in writing by the other party, but only to the extent of and subject to such conditions as may be imposed in such written authorisation; and
 - (d) is required to be disclosed to a Western Australian government Minister, the Western Australian Parliament, or any committee or sub-committee of the Western Australian Parliament (where Landgate is the disclosing party).
- 19.4 This clause will survive termination of this Agreement.

20 Privacy

- 20.1 In respect of the Title Product, the Broker agrees to:
 - (a) comply with the requirements of the Privacy Legislation, particularly in relation to its handling of personal information, as defined in the same, including the collection, use, disclosure and security of such information, whether or not the Broker is required by law to comply with the privacy legislation;
 - (b) comply with any reasonable direction relating to privacy given by Landgate, including those relating to Landgate's own privacy policies and procedures; and
 - (c) not to do anything which if done by Landgate would be a breach of the Privacy Legislation.
- 20.2 Landgate will not be responsible for any actions, claims, cost, proceedings, suits or demands whatsoever arising out of any breach of the Privacy Legislation by the Broker, or any Sub-Broker, End User, Consultant or third person, in relation to any Title Product obtained under this Agreement, or in relation to the Broker's Outputs.
- 20.3 The Broker must not use any Title Product for the purpose of Direct Marketing.
- 20.4 The Broker must not release the Title Products to any third party where that party intends to use those Title Products for the purpose of Direct Marketing.
- 20.5 The Broker will provide any assistance requested by Landgate in relation to an investigation of an allegation of misuse of any Title Product, or contravention of the Privacy Legislation.
- 20.6 This clause will survive termination of this Agreement.

21 Publicity

- 21.1 The Broker agrees to:
 - (a) only release publicity statements or any other form of advertisement or promotion that specifically refers to Landgate or Landgate's Title Products where:
 - (i) they have first been approved by Landgate's authorised delegate in writing (including by email); and
 - (ii) at least 24 hours written notice has been provided to Landgate prior to any such release;

- (b) advise Landgate of any media report in relation to the Title Products of which the Broker is aware, at least 24 hours prior to the report being published; and
- (c) not permit commercial filming or recording in relation to Landgate, without the prior written approval of Landgate's authorised delegate.

22 Suppression of Information

- 22.1 Landgate may at any time give the Broker an Information Suppression Notice.
- 22.2 An Information Suppression Notice must be in writing and contain the Title Products to be deleted or amended.
- 22.3 If the Broker is able to search the Broker's System by a person's name, then within 5 Business Days of receiving an Information Suppression Notice, the Broker must delete any Title Products containing the suppressed information, which are in the Broker's possession or under its control, including any Title Products stored for backup purposes.

23 Conflict of Interest

- 23.1 The Broker must disclose to Landgate any information that is or might be relevant to determining whether an actual, potential or perceived conflict of interest exists or might exist in relation to this Agreement or the performance of this Agreement by the Broker.
- 23.2 Landgate may, in its discretion, terminate this Agreement if it considers that the Broker has, or could reasonably be considered to have, an actual, potential or perceived conflict of interest in relation to the performance of this Agreement by the Broker.

24 Business Continuity

- 24.1 Landgate may develop and implement planning and procedures to meet its obligations under this Agreement and to minimise System Downtime arising from the occurrence of any event which may disrupt or otherwise materially affect the continuity of the Broker's Duties ("**Landgate Business Continuity Plan**").
- 24.2 The Broker must:
 - (a) document and implement business continuity planning and procedures that are reasonably satisfactory to Landgate and appropriate to the Broker's role in carrying on the Broker's Duties, including the appropriate priority of electronic information security programs ("**Broker Business Continuity Plan**");
 - (b) regularly review the Broker Business Continuity Plan to ensure it remains current and relevant to the Broker's Duties;
 - (c) provide to Landgate a current version of the Broker Business Continuity Plan, or allow Landgate to review the Broker Business Continuity Plan, on 30 days' written notice from Landgate; and
 - (d) comply with any reasonable request from Landgate for the Broker to amend the Broker Business Continuity Plan.

25 No Bribe, Inducement or Offer of Employment

- 25.1 The Broker must not, without the prior written consent of Landgate, directly or indirectly approach or communicate with any officer or employee of Landgate having any connection or involvement with the Agreement, for:
 - (i) an offer of employment; or
 - (ii) availability of employment,with the Broker or any related entity.
- 25.2 The Broker must not directly or indirectly offer a bribe, gift or inducement to any employee or contractor of Landgate in connection with the Agreement.

26 Sub-Brokers

26.1 The Broker may appoint a Sub-Broker provided:

- (a) the Broker sends Landgate a formal request and obtains Landgate's prior written approval, which can be refused at Landgate's absolute discretion;
- (b) relevant terms and conditions of this Agreement also apply to any Sub-Broker and include a provision that prohibits the Sub-Broker from appointing sub-agents;
- (c) the contractual relationship between the Broker and Landgate does not impose any express or implied legal obligation of any nature whatsoever, in contract or by any other means, on the part of Landgate to the Sub-Broker;
- (d) the details of any Sub-Broker, as specified in **Item 16**, are advised to Landgate in writing and updated in the same manner, whenever those details change;
- (e) the Broker only provides the Sub-Broker access to the Title Products through the Broker's System;
- (f) the Broker remains entirely responsible for the Sub-Broker's acts or omissions under or in connection with this Agreement;
- (g) orders for Title Products that are taken by the Sub-Broker are accounted for separately and not cumulated with those of the Broker;
- (h) Landgate is permitted to inspect any Sub-Broker's accounts and records which arise from or relate to any part of the Broker's Duties;
- (i) the Broker remains liable for the payment of any Sub-Broker's purchase of Title Products; and
- (j) the Broker indemnifies Landgate fully for any loss it suffers or against any third party liability it incurs, that is caused or contributed to by an act or omission of a Sub-Broker.

26.2 In responding to the Broker's formal request to appoint a Sub-Broker, Landgate may require the Broker to supply supporting information, including the contractual arrangements proposed, details of the Sub-Broker's company ownership, corporate governance, principal activities, technical capabilities, commercial capabilities, anticipated markets and contract documentation, or any other requirement in Landgate's Qualitative Criteria that the Sub-Broker may be required to meet.

26.3 Landgate may withdraw its consent to any or all of the Broker's contractual arrangements with Sub-Brokers at any time by notice and the Broker must terminate the same, within 7 days from the date of receipt of notice.

26.4 If Landgate withdraws its consent to any Sub-Broker arrangements in accordance with **clause 26.3**, Landgate may (acting in its absolute discretion):

- (a) terminate this Agreement; and
- (b) terminate any other contracts it has with the Broker.

26.5 Neither Landgate, nor the State of Western Australia, will be subject to any claim for damages or any other loss, for any contracts terminated under this clause.

27 Broker Acknowledgements

27.1 The Broker agrees and acknowledges that:

- (a) Landgate is not required to install the Title Products on the Broker's System or to test whether the Title Products are capable of being processed on the Broker's System;
- (b) the Broker may receive introductory training from Landgate for any new Title Product and that training may be free of charge, if conducted at Landgate's business premises. Otherwise Landgate is not required to provide any training in the use of the Title Products, but may do so at its absolute discretion, at a cost which provides a fair commercial return to Landgate, in accordance with section 16 of the *Land Information Authority Act 2006*;

- (c) full responsibility for obtaining and for the consequences of using hardware, Landgate Software, computer programs and any other thing necessary to make use of the Title Products, remains with the Broker;
- (d) Landgate does not represent or warrant to the Broker that:
 - (i) the Title Products are error free or virus free;
 - (ii) the supply of the Title Products will be uninterrupted; or
 - (iii) the Title Product will provide any function not specified in the Regulations and the TLA;
- (e) Landgate gives no assurance or guarantee of the volume of sales or orders for the Title Products which the Broker may receive or expect to receive under this Agreement;
- (f) it is responsible for making its own assessment of the potential market for the Title Product and carrying out any marketing or promotional activities needed to stimulate and increase sales volumes during the Term; and
- (g) Landgate is not liable to the Broker, or any of its End Users, for any loss or damage (including loss of profits, business, revenue or data) whether in contract, tort (including negligence) or otherwise, for:
 - (i) the Brokers' Outputs; or
 - (ii) where the Broker combines information such that the output derogates or deviates from that obtained from the Web Service.

28 Out of Scope Matters

28.1 The Title Product:

- (a) is provided by Landgate in good faith on an "as is" basis and the Broker, End User or any third party should not act on the basis of anything contained in the Title Product without first obtaining specific professional advice; and
- (b) has not been prepared to meet the requirements of the Broker End User or any third party and it is the sole responsibility of the Broker, End User or third party to ensure that the Title Product meets its own individual requirements.

28.2 To the extent permitted by law, Landgate does not represent or warrant that:

- (a) the Web Service or the Landgate System is error free or virus free;
- (b) the supply of the Title Product will be uninterrupted;
- (c) the Title Product will provide any function not designated in any Title Product definition; and
- (d) the Title Product will be capable of being processed on any equipment or System of the Broker.

28.3 No warranty, condition, description or representation is given by Landgate in relation to any documentation, services and/or software provided in conjunction with this Agreement, other than for the Title Products provided under the TLA, to the extent permitted by law.

28.4 All representations, warranties, terms and conditions whether express or implied by use, statute or otherwise, in relation to the state, quality or fitness for purpose of any documentation, services and/or software provided in conjunction with this Agreement, other than for the Title Products provided under the TLA, are excluded, to the extent permitted by law.

29 Limitation of Liability

29.1 Except as provided in **clauses 29.2** and **29.3**, Landgate will not be liable to the Broker, its Sub-Brokers, End Users, Consultants, agents or any third party, for any loss or damage (including loss of profits, business, revenue or data), arising from or in connection with this Agreement, whether in contract, tort, negligence or otherwise, or in relation to:

- (a) the performance of the Web Service;

- (b) any inaccuracy, omission, defect or error in the Broker's System or the Broker failing to comply with the IT System Requirements;
 - (c) any claim for infringement of Intellectual Property Rights based on the modification, combination, operation or use of the Title Products with any computer programs, systems or data not provided by Landgate;
 - (d) the Broker's Outputs; or
 - (e) anything except the Title Products provided under the TLA.
- 29.2 Pursuant to section 64A of the Australian Consumer Law, this **clause 29.2** 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, Landgate'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 Landgate'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 Landgate's option;
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- 29.3 This **clause 29.3** 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 Landgate for any breach by it of such implied term is limited, at Landgate's option, to any one or more of the remedies referred to in **clauses 29.2(a)** and **29.2(b)**.
- 29.4 To the fullest extent permitted by law, Landgate's total liability and the sole and exclusive remedy of the Broker for:
- (a) System Downtime which adversely affects the Broker's System or the ability of the Broker to carry on the Broker's Duties and which is caused by Landgate, will at the option of Landgate, be either:
 - (i) the refund of Regulated Fees for any lost or destroyed Title Products in transit; or
 - (ii) the re-supply of the Title Products at no additional charge to the Broker; and
 - (b) any loss or damage incurred by the Broker as a result of Landgate's breach of contract, tort, negligence or otherwise, is limited to the payments made by the Broker to Landgate in the last 12 month period, or an estimate of payments to Landgate if a 12 month period has not elapsed.
- 29.5 **Clause 29.4(a)** may be a "warranty against defects" for the purposes of the Australian Consumer Law. Accordingly, **clauses 29.5** to **29.9** set out the information prescribed by the Australian Consumer Law. In particular, the following statement is included as required by Regulation 90 of the *Competition and Consumer Regulations 2010*: "Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure".
- 29.6 If the Broker is a "consumer" within the meaning of section 3 of the Australian Consumer Law, the benefits to the Broker of **clause 29.4(a)** are in addition to other rights and remedies under a law in relation to the goods or services to which **clause 29.4(a)** relates.

- 29.7 In order to be entitled to claim under **clause 29.4(a)**, notice to Landgate must be given within 30 days of the date on which the alleged System Downtime occurred.
- 29.8 Notice of a claim under **clause 29.4(a)** must be provided to Landgate in accordance with the contact details in **Item 2** as soon as practicable after the alleged System Downtime is apparent and must include:
- (a) details of the order made by the Broker under which the Title Products relating to the claim were provided;
 - (b) details of the alleged System Downtime; and
 - (c) contact details of the Broker making the claim.
- 29.9 The Broker will bear the expense of any claim made in relation to **clause 29.4(a)**.
- 29.10 Notwithstanding anything else in this Agreement, the Broker must ensure that Landgate will not be held liable for any loss or damages claimed by End Users, Consultants, Sub-Brokers or third parties arising from or in connection with:
- (a) the modification, combination, operation or use of any Title Products with computer programs or other data not provided by Landgate; and/or
 - (b) the Broker's Outputs.
- 29.11 This clause will survive termination of this Agreement.

30 Release and Indemnity

- 30.1 To the fullest extent permitted by law, the Broker irrevocably releases Landgate from any claim that the Broker may have against Landgate in connection with this Agreement.
- 30.2 The Broker must indemnify and keep indemnified, hold harmless and defend Landgate 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 Broker's, End-User's, or any person's use or reliance on the Title Product, whether or not any such reliance is notified to Landgate;
 - (b) any unlawful or wilfully wrong act or omission of the Broker, Sub-Broker or Consultant arising in relation to this Agreement;
 - (c) any breach of this Agreement, tort or negligence by the Broker, Sub-Broker or any Consultant in connection with this Agreement;
 - (d) any breach of Intellectual Property Rights by the Broker or any third party to whom the Broker provided access, either deliberately or inadvertently, to any Title Product;
 - (e) any unauthorised use of the Broker ID, Web Service, Landgate Systems or the Title Product, including the combination or modification of the Title Product and creation of value added products;
 - (f) any Broker Outputs; and
 - (g) any legal costs, charges and expenses arising from this clause,
- except to the extent such loss is caused by Landgate's negligence or breach of this Agreement.
- 30.3 The Broker agrees to:
- (a) notify Landgate of and to provide all information in its possession or control in relation to any breach, or suspected breach, of the Agreement by an End User, Sub-Broker, Consultant or third party;
 - (b) provide all reasonable assistance in any action taken or proposed to be taken by Landgate in enforcing its rights under this Agreement;
 - (c) promptly advise Landgate in writing of any actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, charges and expenses which may be brought, claimed or threatened against the Broker, Sub-Broker or Landgate for or relating to any title Product.
- 30.4 This clause will survive termination of this Agreement.

31 Default

- 31.1 The Broker is in default if the Broker fails to comply with any obligations under this Agreement.
- 31.2 Landgate may, in the event of any default by the Broker:
- (a) immediately without notice suspend part or all of the Broker's access to the Title Products, until such time as the Broker remedies the default;
 - (b) charge the Broker interest on any overdue amounts at a rate equal to 2% per cent above the applicable base lending rate of the Commonwealth Bank, as determined by Landgate and calculated on a daily and cumulative basis from the payment due date until the date of payment in full;
 - (c) charge and recover from the Broker all costs reasonably incurred by Landgate in relation to the enforcement and/or collection of any overdue amounts;
 - (d) perform on behalf of the Broker any obligations that the Broker should have done or is required to do under this Agreement; and
 - (e) draw on the Bank Guarantee to the amount required to meet the Broker's obligation and request the Broker immediately provide a revised Bank Guarantee to cover any shortfall.
- 31.3 To the extent that Landgate is required to perform the Broker's obligations or recover any outstanding amounts, the Broker agrees:
- (a) to pay Landgate, within 7 days of receiving an invoice from Landgate, the full amount of such invoice without setoff or deduction for Landgate's costs and efforts; and
 - (b) Landgate may immediately take action to recover any amount due to it as a liquidated debt.

32 Termination

- 32.1 Either party may terminate this Agreement by giving the other party at least 30 days' written notice in writing.
- 32.2 Landgate may terminate this Agreement immediately by written notice to the Broker if:
- (a) the Broker commits a breach of any of its obligations and has not remedied the breach within 14 days of being notified of the breach;
 - (b) the Broker's corporate structure, management, control or ownership changes;
 - (c) the Broker is wound up, becomes insolvent or has a liquidator, provisional liquidator, administrator, receiver, manager or receiver and manager appointed; or
 - (d) the Broker fails to comply with **clauses 5, 6, 7, 8, 10, 12, 15, 17, 18, 19, 20, 22 and 26**.
- 32.3 Any termination of this Agreement will not affect any accrued rights or liabilities of any party, including rights to injunctive relief or any liability to account for profits from any breach of this Agreement.

33 Obligations when Agreement Ends

- 33.1 The expiration or termination of this Agreement does not affect any rights, liabilities or obligations of the parties as a result of anything occurring before expiration or termination.
- 33.2 On termination of this Agreement, the Broker must immediately:
- (a) pay Landgate all fees and charges and Regulated Fees owing;
 - (b) cease to use all Title Products and the Web Service to access the Title Products;
 - (c) delete and expunge, or arrange for the deletion of any Title Products obtained from Landgate within 14 days of the Termination Date;
 - (d) return to Landgate, or delete and expunge, all of Landgate's Confidential Information.
- 33.3 The Broker must:
- (a) provide Landgate with a notice certifying that **clause 33.2** has been complied with, within 14 days of the Termination Date;

- (b) maintain the security and confidentiality of all of Landgate's Confidential Information;
- (c) co-operate with Landgate in every other respect, as it may reasonably require, to minimise any loss, damage or inconvenience to Landgate and its customers resulting from the expiration or termination of this Agreement; and
- (d) permit Landgate or any person authorised by Landgate to inspect and audit the Broker for compliance purposes, in accordance with **clause 16**.

33.4 This clause survives the termination of this Agreement.

34 Further Term & Holding Over Period

34.1 This Agreement may be renewed for the Further Term, provided:

- (a) the Broker is not in breach of any terms and conditions of this Agreement;
- (b) the Broker makes a written request to Landgate that this Agreement be extended, at least 3 months prior to the expiration of the Term;
- (c) Landgate, in its absolute discretion, agrees to that request; and
- (d) the Broker delivers any signed documentation required by Landgate.

34.2 If Landgate consents to the Further Term, the renewed agreement:

- (a) commences on the day after the expiration of this Term;
- (b) will include any increase in fees and charges in accordance with this Agreement; and
- (c) is otherwise on the same terms and conditions of this Agreement, except for the exercised option for a Further Term.

34.3 If the Agreement is not extended, but the Broker is not in arrears, continues to make any payments required and Landgate consents, then this Agreement will:

- (a) continue in operation in all respects during a Holding Over Period;
- (b) require the Broker to pay any fees and charges monthly in advance, as increased in accordance with **clause 9** on each anniversary of the CPI Review Date during the Holding Over Period; and
- (c) be terminable by either party on not less than 30 days' written notice.

35 Force Majeure

35.1 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 greater than one month; and
- (c) was not reasonably foreseeable at the time this Agreement was entered into.

35.2 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 the Agreement impossible.

35.3 Neither party will be in breach of its obligations which it cannot fulfil as a result of an event contemplated in **clauses 35.1** and **35.2**, provided each party notifies the other as soon as a party believes an occurrence has occurred of the type contemplated in **clauses 35.1** and **35.2**.

35.4 If the situation specified in **clauses 35.1** and **35.2** occurs, the Broker must comply with **clause 33**.

36 Dispute Resolution

36.1 Before resorting to external dispute resolution mechanisms, the parties must attempt to settle by negotiation in good faith, any dispute in relation to this Agreement and where practicable, each party will refer the matter to personnel who have authority to intervene and direct some form of resolution.

- 36.2 Either party may give the other party formal notice in writing of a dispute, and if the dispute is not settled within 10 Business Days, it must be submitted to the dispute resolution process described in this clause.
- 36.3 It is agreed by both parties that the dispute resolution process will first consist of mediation.
- 36.4 In the absence of agreement, the mediation will 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.
- 36.5 During the mediation:
- (a) the parties may not be represented by legal practitioners;
 - (b) the mediator will determine the process for mediation; and
 - (c) the costs of the mediation will be shared equally by the parties.
- 36.6 If the dispute remains unresolved after 30 days, either party may then have recourse to the courts.

37 Notices

- 37.1 Any notice given under this Agreement 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, facsimile or email address specified in **Item 2** or the address, facsimile 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 facsimile transmission, at the time of transmission provided the sender's facsimile machine produces a report confirming successful transmission of the facsimile in its entirety, however, if transmission occurs at a time later than 4:00pm at the recipient's location, the notice will be deemed duly given at 9:00am on the next Business Day; and
 - (iv) for email, when the email enters the recipient's email server.

38 General Terms

- 38.1 The Broker must do all things and sign all documents necessary to give effect to the provisions of this Agreement.
- 38.2 Any variation of the terms and conditions of this Agreement will only be binding if in writing and signed by both parties.
- 38.3 If there is any inconsistency between this Agreement and the Schedule to this Agreement, the Schedule prevails to the extent of that inconsistency.
- 38.4 This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements or representations, written or oral.
- 38.5 Waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.
- 38.6 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.
- 38.7 The rights provided in this Agreement are cumulative with and not exclusive of the rights provided by law or available in equity independently of this Agreement.

- 38.8 Unless otherwise specified, the Broker must not assign or transfer its rights under this Agreement unless it has first obtained the written consent of Landgate which may be withheld in its absolute discretion.
- 38.9 If the Broker is a corporation (other than a public company as defined in the *Corporations Act 2001 (Cth)*) the Broker is deemed to have assigned this Agreement if:
- (a) anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Broker to another person; or
 - (b) there is any change in control of the Broker within the meaning of the *Corporations Act 2001 (Cth)*.
- 38.10 The Broker is not by virtue of this Agreement a partner, joint venturer or employee of Landgate, nor does the Broker have any power or authority to bind or represent Landgate, or represent itself as such.
- 38.11 The Broker warrants and represents to Landgate that any lobbyist (as defined by any Premier's Circular or like document) the Broker has employed, engaged or has otherwise involved, directly or indirectly, in connection with the Agreement, is duly registered as a lobbyist and has fully complied with any obligations of a lobbyist.
- 38.12 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 Landgate's election.
- 38.13 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.

39 Definitions

- 39.1 The following words and expressions are capitalised in this Agreement and have the meanings assigned to them as shown below, except where the context implies otherwise:

Access Account means an End User access account, user identification and password for use by Landgate as specified in **clause 2.1(c)**, which permits Landgate to access Title Products within the Broker's System equivalent to the access provided to End Users.

Agreement means this document, including any Schedule, Annexure or other document incorporated by reference into this document.

Auditor General means the Auditor General for Western Australia.

Broker means the party specified as such in **Item 2**.

Broker ID means the client identification code issued by Landgate to the Broker, to assist with identification of the Broker and providing the Broker access to the Web Service.

Broker's Duties means to market, promote and supply Title Products on behalf of Landgate to End Users.

Broker's Outputs means the Broker's own products and services which:

- (a) are produced independently by the Broker;
- (b) are not part of the Broker's Duties and not the subject of Landgate's agency arrangements as specified in **clause 1**;
- (c) supplement the Title Products, without altering their inherent nature or integrity; and
- (d) will be supplied at a price determined entirely by the Broker,

and may include the following products and services:

- (e) the bundling or packaging together of several Title Products;
- (f) the bundling or packaging of the Title Products with other products from the Broker's business;
- (g) the provision of an integrated web portal or web service including the Title Products;

- (h) the provision of advanced account management functions; and
- (i) any other Broker product which incorporates a Title Product.

Broker's System means the computer system comprising the operating, application and database systems of the Broker as specified in **Item 8**.

Business Day means any day other than a Saturday, Sunday or public holiday in Western Australia.

Business Hours means 08:00am to 17:00pm western standard time or western daylight time, on a Business Day.

Commencement Date means the date this Agreement takes effect, as specified in **Item 4**.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated in writing by Landgate as confidential;
- (c) the Broker knows or reasonably ought to know is confidential, and includes:
 - (i) information comprised in or relating to any Intellectual Property Rights of Landgate or the State of Western Australia;
 - (ii) Landgate information to which the Broker has access, other than information referred to in (i), which has actual or potential commercial value to Landgate;
 - (iii) information relating to internal management, computing operations, personnel, policies, strategies, practices and procedures of Landgate and/or the Government of the State of Western Australia and any information in the Broker's possession relating to the Western Australian Public Sector;
 - (iv) information in the Broker's possession relating to Landgate's customers, clients or suppliers;
 - (v) any information shared between the parties to this Agreement, pursuant to this Agreement, including the final terms of this Agreement; and
 - (vi) the contents of any documentation supplied by Landgate to the Broker, except for the Title Products.

Consultant means any person (including the employees and contractors of that person) engaged by the Broker.

CPI means the CPI All Groups Index Numbers for Perth the subject of Catalogue No. 6401.0 provided by the Australian Bureau of Statistics or if the basis upon which it is determined is substantially altered, then such basis as Landgate may reasonably determine to be as near to the CPI previously referred to as possible.

CPI Review Date means the date(s) on which the fees and charges made under this Agreement are reviewed, as specified in **Item 12**.

Date of Agreement means the date specified in **Item 1**, or if blank, the date that the last party signs this Agreement.

Direct Marketing means any activity which makes it possible to offer goods or services or to transmit other messages to a person, organisation or segment of the population by post, telephone or other direct means (electronic or otherwise) aimed at informing or soliciting a response from the person, organisation or segment of the population as well as any service ancillary to the same.

EBIS means Landgate's Enterprise Business Information System, which includes a credit facility provided by Landgate, to assist customers in making payments to Landgate for goods and services.

End User means the Broker's or Sub-Broker's customers, members or subscribers, who have entered into an agreement in accordance with **clause 12** (Related Contract), to have access to Title Products. End Users (including any employees, contractors and agents of the End Users) may use Title Products for Internal Business Use only.

Expression of Interest means any document issued by Landgate and responded to by the Broker, outlining any relevant information or requirements that must be met before becoming a Broker of the Title Products, as varied, updated and amended by Landgate from time to time.

Further Term means the period specified in **Item 6** and includes any period of extension granted under **clause 34**.

GST means the goods and services tax payable under the GST Act.

GST Act means the *New Tax System (Goods and Services Tax) Act 1999* (Cth).

Holding Over Period means the time period during which the parties continue the operation of this Agreement, despite no formal renewal.

Information Suppression Notice means a written notice given to the Broker by Landgate following an application made to Landgate by a person for suppression of specified information about that person or another person, from all Landgate name indices, for reasons of personal safety and security.

Intellectual Property Rights means all rights in and to any copyright, trade mark, trading name, design, patent, know how (trade secrets) 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.

Internal Business Use means use of the Title Product solely for the personal or internal administration and operation of the End User. It does not entitle the End User to make available or to provide the Title Product to any third party outside the End User's business, except to a client of the End User, where that client will be the final recipient of the Title Product concerned in relation to the singular purpose or transaction for which the Title Product was acquired.

IT System Requirements means the information technology requirements specified by Landgate to obtain access to the Title Products, including as provided in the following Landgate documents (as varied from time to time):

- (a) Functional Definition for Broker Web Services; and
- (b) Broker Web Services - Consumer Programmer's Guide.

Landgate Software means the computer programs, code, algorithms (if any) incorporated or provided with Title Products, which is necessary to use that Title Product in accordance with this Agreement.

Landgate System means Landgate's computer systems that provides access to the Title Product, including the operating, application and database systems of Landgate.

Notice means a written note, given and effective in accordance with **clause 37**.

Privacy Legislation means the *Privacy Act 1988* (Cth) and any State privacy legislation which may be enacted during the Term.

Qualitative Criteria means Landgate's requirements that must be met before a potential broker can become an authorised broker of Landgate's Title Products, including as may be detailed in any Expression of Interest.

Related Contract means the contract or agreement that must be entered into between a Broker and its End Users before the End User can be provided access to the Title Products, in any form.

Register means the document or records that must be maintained by the Broker in accordance with **clause 16** and that contains the information specified in **Item 15**.

Regulated Fee means the fee payable to Landgate for the relevant Title Product, as specified in the Regulations.

Regulations means the *Transfer of Land Act Regulations 2004* as varied from time to time.

Site means any premises or location specified in **Item 9** where the Broker, Sub-Broker, Consultant or any employees of such, use or store the Title Product.

Special Conditions means additional conditions of this agreement set out in **Item 17**.

Sub-Broker means an agent of the Broker as specified in **clause 26**.

System Downtime means the total elapsed time during which the Web Service cannot be accessed by the Broker for reasons attributable to a failure of any part of the Broker's System or Landgate System, for any reason, not including scheduled maintenance periods.

Term means the duration of this Agreement specified or calculated in **Item 5**, provided this Agreement is not terminated early or otherwise extended.

Termination Date means the earliest of:

- (a) the date or latest date stated in **Item 5**;
- (b) if the Agreement is terminated earlier, that date; and
- (c) if the Parties enter into a Further Term or Holding Over Period, the expiry date of the same.

Title Product is the generic term used to describe:

- (a) any of the individual products specified in **Item 7**; or
- (b) any other products described in the Regulations, which Landgate may make available through the Web Service from time to time.

TLA means the *Transfer of Land Act 1893 (WA)*.

Web Service means customised internet access to the Landgate System, including an online ordering service, which will be provided by Landgate to the Broker.

40 Interpretation

40.1 In this Agreement, unless the contrary intention appears:

- (a) item numbers refer to those in the **Schedule**;
- (b) words in the singular include the plural and vice versa;
- (c) any gender includes the other genders;
- (d) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (e) headings and bold print are for reference only and do not affect interpretation;
- (f) if any form of the word 'include' is used, it is to be read as if followed by the words 'without limitation';
- (g) 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;
- (h) where a party to this Agreement is more than one person, they are jointly and severally liable under the terms of this Agreement;
- (i) where time is to be calculated by reference to a day or event, that day or event is included;
- (j) 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;
- (k) 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;
- (l) 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 Landgate, unless in writing;
- (m) a reference to:
 - (i) a person includes a company, partnership, joint venture, unincorporated association, corporation, government or statutory body or authority, or body corporate;
 - (ii) a person includes the person's legal personal representatives, executors, administrators, successors and permitted assigns;

- (iii) a party includes that party's officers, employees, contractors, agents, invitees and board members;
 - (iv) a statute, ordinance, code or other law includes regulations, by-laws and rules and any successive statutory instrument as modified or replaced;
 - (v) any agreement or document is a reference to that agreement or document as amended, supplemented or replaced from time to time;
 - (vi) a currency, including dollars or \$ is to the Australian currency, unless otherwise stated;
 - (vii) a right includes a benefit, remedy, discretion or power;
 - (viii) time is to Western Standard Time, Perth, Western Australia.
-

SAMPLE

SCHEDULE

Item 1 Date of Agreement

[insert date agreement signed]

Item 2 Details of Parties

Details	Landgate	Broker
Entity Name	The Western Australian Land Information Authority, a body corporate established by the <i>Land Information Authority Act 2006</i> and trading as Landgate	
ABN	86 574 793 858	
Contact Person	Pepita Adams, Account Manager, Business & Government Sales	
Address for service of Notices	1 Midland Square, Midland, Western Australia 6056	
Telephone	(08) 9273 7455	
Mobile		
Fax	(08) 9273 7205	
Email Address	pepita.adams@landgate.wa.gov.au licensing@landgate.wa.gov.au	
Web Address	www.landgate.wa.gov.au	

Item 3 Agreement Number

[insert agreement number]

Item 4 Commencement Date

[insert date agreement commences]

Item 5 Term and Termination Date

Three (3) years, terminating on [insert]

Item 6 Further Term

[[x] options to extend, each for a period of [x] years.]

Item 7 Title Products

- (a) Certificates of Title;
- (b) Check searches;

- (c) Survey documents; and
- (d) TLA documents.

Item 8 Broker's System

[insert any Hardware or Software details relevant, as provided by the Broker]

Item 9 Site(s)

[insert address of premises or location that the Broker, Sub-Broker, Consultant or any employees of such, use or store the Title Product]

Item 10 Fees and Charges

Not applicable

Item 11 Regulated Fees and Manner of Payment

The Regulated Fee for each Title Product is as prescribed in the Regulations.

The value of all Title Products sold each month by the Broker (and any of its Sub-Brokers) must be paid by the due date specified in the monthly invoice issued by Landgate.

Item 12 CPI Review Date(s)

Annually on 1 July.

Item 13 Insurance

- (a) \$10,000,000 product and public liability.
- (b) \$5,000,000 professional indemnity.

Item 14 Bank Guarantee

The amount equal to Landgate's estimate of the Regulated Fees for Title Products payable for all Title Products provided under this Agreement, for a 60 day period.

On the Commencement Date the Bank Guarantee is: \$[insert amount]

[Note see Account Managers for current policy whether a Bank Guarantee required. Finance guidelines provide that any client accounts that exceed \$50,000 may be required to have a Bank Guarantee subject to an assessment of the client and their credit history with us.]

Item 15 Register

The Register must record and monitor the Title Product transactions, including the following:

- (a) date and time of orders or requests for Title Products by each End User;
- (b) date and time of delivery of Title Products to End Users;
- (c) the name and contact address of each End User and Consultant;
- (d) a breakdown of orders or requests for Title Products by the Broker and each of its Sub-Brokers; and
- (e) date and time of each access of Title Products by a Consultant.

Item 16 Sub-Broker Details

Sub-Broker	Details
Entity Name	
ABN	
Contact Person	
Address for service of Notices	
Telephone	
Mobile	
Fax	
Email	
Web Address	

Item 17 Special Conditions

Not applicable

SAMPLE

SIGNING PAGE

Landgate's Execution

Signed for and on behalf of the Western Australian Land Information Authority in accordance with authorisation under section 87 of the *Land Information Authority Act 2006*, in the presence of:

Signature of Witness

Name of Witness (print)

Date: / /

Broker's Execution

Executed by(ABN.....) in accordance with section 127 of the *Corporations Act 2001*:

Signature of Director

Signature of Director / Company Secretary

Name of Director (print)

Name of Director / Company Secretary (print)

Date: / /

Date: / /

OR

Executed by(ABN.....) in accordance with section 127 of the *Corporations Act 2001*:

Signature of Sole Director/Sole Secretary

Name of Sole Director/Sole Secretary (print)

Date: / /