

## LINZ Landonline BULK DATA SUPPLY AGREEMENT

### PARTIES

A HER MAJESTY THE QUEEN in right of New Zealand acting by and through Land Information New Zealand (herein called "LINZ")

Address: The Chief Executive  
Land Information New Zealand  
Lambton House, 160 Lambton Quay  
Private Box 5501  
Wellington 6145  
New Zealand

B \_\_\_\_\_

(Name of Licensee)

Address (postal and street):

Contact person:

Phone:

Facsimile:

E-mail:

### **THIS LICENCE AGREEMENT SETS OUT IMPORTANT PROVISIONS RELATING TO YOUR OBLIGATIONS TO LINZ AND LINZ'S LIABILITY TO YOU.**

To order the Landonline bulk data on DVD you will need to complete **two original, paper copies** of this Agreement along with a Licence Application Form (Order Form). You may obtain these documents by printing hard copies directly from the LINZ web-site, or by writing to LINZ at Private Box 5501, Wellington 6145, to request that they be sent to you. You must sign both copies of this Agreement, complete and sign the Licence Application Form (Order Form) and send all of these documents (including both signed copies of this Agreement) to LINZ together with a cheque for payment. Upon sending the documents and cheque you will be deemed to have made an offer to LINZ on the terms set out in this Agreement. That offer will only be accepted by LINZ upon your receipt of a copy of this Agreement countersigned

by LINZ together with the first supply to you of a DVD containing the bulk data. LINZ takes no responsibility for delays in the receipt of any offer from you. Nothing you add to the Licence Application Form (Order Form) or otherwise specify to LINZ (whether or not in writing) will amend or over-ride the terms below.

## **AGREEMENT**

1. These terms, along with the notices, cautionary notes and disclaimers referred to in clause 27.1 hereof, and your completed Licence Application Form together constitute the agreement between you and Her Majesty The Queen in right of New Zealand acting by and through Land Information New Zealand ("LINZ"), for the supply by LINZ and the use by you of the data, and the media on which that data is stored, both as described in the Licence Application Form (Order Form) and in LINZ's web-site relating to Landonline data ("the web-site"). That data and the said media shall be referred to in these terms as "the Data". Unless otherwise specified in these terms, references to "the Data" also refer to the whole or any part of the said data and media (whether or not in a modified form, or as part of some compilation or derivative work). In these terms: the said agreement between you and LINZ shall be referred to as "this Agreement"; and the said Licence Application Form (Order Form) as completed by you shall be referred to as "the Order Form".

**PLEASE READ THESE TERMS CAREFULLY. THEY CONTAIN IMPORTANT PROVISIONS RELATING TO YOUR OBLIGATIONS TO LINZ AND LINZ'S LIABILITY TO YOU. BY SIGNING AND SENDING TO LINZ THE CORRECTLY COMPLETED ORDER FORM TOGETHER WITH TWO SIGNED COPIES OF THIS AGREEMENT AND PAYMENT, YOU ARE DEEMED TO MAKE AN OFFER TO LINZ. IF LINZ ACCEPTS THAT OFFER, IN THE MANNER PRESCRIBED BELOW, THEN YOU WILL BE DEEMED TO HAVE ENTERED INTO A CONTRACT WITH LINZ AND YOU WILL BE BOUND BY THESE TERMS.**

**NOTHING YOU STATE ON THE ORDER FORM OR OTHERWISE (WHETHER OR NOT IN WRITING) WILL HAVE THE EFFECT OF AMENDING OR OVERRIDING THESE TERMS. ANY DELIVERY OF THE DATA BY LINZ TO YOU, IN CIRCUMSTANCES WHERE YOU HAVE SOUGHT TO AMEND, DELETE OR ADD TO THE TERMS SET OUT BELOW, WILL NOT CONSTITUTE ACCEPTANCE BY LINZ OF AN OFFER ON TERMS DIFFERING FROM THESE TERMS.**

## **FORMATION OF AGREEMENT**

- 2 This Agreement governs the supply of Data by LINZ from 1 February 2007. To receive Data after 1 February 2007, you must have made an offer to LINZ and LINZ must have accepted your offer as set out below.
- 3 Once you have signed and sent to LINZ, at the address shown on the Order Form, the correctly completed Order Form together with two signed copies of this Agreement and payment, you are deemed to have made an offer to LINZ on the terms set out in this Agreement.
- 4 LINZ will be deemed to accept your said offer, and an enforceable agreement between you and LINZ will be formed, upon your receipt from LINZ of a copy of this Agreement countersigned by LINZ, together with the Data. The agreement between you and LINZ will be deemed to be upon the unmodified terms and conditions of this Agreement.

## **AGREED USE**

- 5 LINZ may require you to amend or delete the Data (or any part of the Data), including any Data supplied by you to a third party (whether or not supplied by you in a modified form or compilation), at any time and provide evidence satisfactory to LINZ that the Data has been so amended or deleted.
- 6 If:
  - 6.1 with regard to Data held by you, you do not comply with a request made by LINZ pursuant to clause 5 within 5 business days of such a request; or
  - 6.2 with regard to Data supplied by you to a third party, the third party does not comply with a request made by LINZ pursuant to clause 5 within 10 business days of such a request (whether or not that request is made to you and/or the third party),LINZ may:
  - (a) demand the immediate return of all Data from you (including all copies of the Data and Data supplied by you to third parties);
  - (b) withhold the supply of Data to you; and/or
  - (c) withhold the release of any New Versions of the Data to you.
- 7 You have the unlimited right to use, modify, copy, create derivative works from, on-supply and otherwise deal with the Data, subject always to the terms of this Agreement.
- 8 If you supply the Data to a third party you will:
  - 8.1 ensure that such supply is on terms replicating clause 5 so that any Data supplied by you to a third party (whether or not supplied by you in a modified form or compilation) will be amended or deleted at the request of LINZ and that evidence will be supplied to LINZ by you and/or the third party (at LINZ's election) that the Data has been so amended or deleted;
  - 8.2 use your best endeavours to ensure such supply is on terms which exclude and/or limit (as the case may be) LINZ's liability to the extent set out in this Agreement;
  - 8.3 use your best endeavours to ensure such supply is on terms which replicate this clause 8, for the benefit of LINZ;
  - 8.4 ensure that such supply is on terms under which you and the third party agree that, for the purposes of the Contracts (Privity) Act 1982, the terms replicating clause 5 and this clause 8 have been included for the benefit of LINZ; and
  - 8.5 comply with all laws applicable to the supply of Data to the third party including the Privacy Act 1993.
- 9 You also agree that you will:
  - 9.1 include, for LINZ's benefit, in any compilations, derivative works, modified versions, copies or reproductions that you make of or from the Data, all disclaimers contained on or within the packaged DVD containing the Data and/or contained in any of the Data itself; and
  - 9.2 use your best endeavours to ensure that all third parties to whom you directly or indirectly supply such compilations, derivative works, modified versions, copies or reproductions also include, for LINZ's benefit, those disclaimers in any further compilations, derivative works, modified versions, copies or reproductions they make of or from the Data. Where derived products are in the form of published work, and it is not possible to reproduce the disclaimers within the publication, the following acknowledgement note shall be shown: "Sourced from Land Information New Zealand data. Crown Copyright Reserved".

## **INDEMNITY**

- 10 You agree to indemnify LINZ and hold LINZ harmless against all losses, demands, costs and liabilities suffered and incurred by LINZ, including (without limitation) those resulting from:
- 10.1 this Agreement (including, without limitation, your breach of this Agreement);
  - 10.2 the Data;
  - 10.3 the copying, modification, alteration, re-sorting, compilation or amendment (as required pursuant to clause 5 or otherwise) of the Data, whether by you or by a third party receiving the Data from you;
  - 10.4 any compilation or derivatives made from the Data, whether made by you or by a third party receiving the Data from you;
  - 10.5 the supply of the Data (whether or not in modified form or in a compilation) to third parties, whether supplied by you or by a third party receiving the Data from you;
  - 10.6 any tortious act committed by you or any third party in relation to this Agreement, the Data, and/or any of the activities set out in clauses 10.3 to 10.5; and/or
  - 10.7 any third party claim (including any equitable claim) arising from or connected with clauses 10.1 to 10.6.

## **DISCLAIMERS AND LIABILITY**

### ***No representations or warranties***

- 11 Except as specified in clause 23, but without limiting clauses 12 to 14 below:
- 11.1 the representation and content of the Data are as expressed in the description of the Data contained in the Order Form and the web-site, in particular in the Introduction to the Provision of Bulk Data from Landonline and in the Data Dictionary. While all reasonable efforts have been made by LINZ to ensure that the Data is as accurate as practicable within the bounds of those specifications, LINZ makes no representations and gives no warranties that the Data is free from errors, omissions or other inaccuracies. You agree to release LINZ from all liability (whether in contract, tort (including negligence), equity or any other basis) for any errors, omissions or other inaccuracies in the Data.
  - 11.2 LINZ also makes no representations and gives no warranties that the Data, as delivered, will be capable of being processed on your computer equipment and software. You agree that LINZ has no obligations under this Agreement to install or convert the Data for use with your computer equipment and software (such installation and conversion being entirely at your own risk), nor does LINZ have any obligation for training you or your personnel in the use of the Data. Further, you acknowledge that the only technical documentation LINZ is obligated to supply to you is that contained in the Introduction to the Provision of Bulk Data from Landonline and in the Data Dictionary, or elsewhere in the Data itself.
  - 11.3 LINZ gives no warranty that the Data will be free from infection, viruses or destructive code. LINZ shall not be liable (whether in contract, tort (including negligence), equity or any other basis) for any damage to, or viruses that may infect, your computer equipment or software due to your use, installation or conversion of the Data.

11.4 LINZ makes no representations and gives no warranties that any person has consented to the provision of Data to you or consented to, or approved, any subsequent use or disclosure of that Data by you.

***No liability for loss or damage arising from use***

12 Except as specified in clause 23, LINZ shall not be liable (whether in contract, tort (including negligence), equity or on any other basis) for any loss or damage, sustained by you or any other person, directly or indirectly from any use whatsoever of the Data (even if LINZ has been advised of the possibility of such loss or damage). Such loss/damage includes, without limitation, damage to property, injury to persons, loss of profits, business interruption loss, loss of data, and loss as a result of any amendment to or deletion of the Data in accordance with clauses 5 and/or 6.

13 In particular, but without limiting the foregoing provision, LINZ will not be liable (whether in contract, tort (including negligence), equity or on any other basis) for any loss or damage whatsoever arising from any modification, amendment or deletion (whether pursuant to clause 5 or otherwise) made to the Data or any compilation or derivative work created from or using the Data in each case whether made by you, by any other person.

***LINZ's cap on liability***

14 In the event that any exclusion of LINZ's liability set out in this Agreement is inapplicable or is held unenforceable, LINZ's liability under or in connection with this Agreement, or arising out of any use, reproduction, modification, amendment or deletion of the Data, or creation of compilations or derivative works of or from the Data (by you or by any other person), whether that liability arises in tort (including negligence), contract, equity or on any other basis, shall be limited to the (GST exclusive) fees paid by you for the Data version which gave rise to the said loss or damage.

**INTELLECTUAL PROPERTY**

15 You acknowledge and agree that all copyright and other intellectual property rights (together "IP") comprising, or used or embodied in, the Data are vested absolutely and exclusively in LINZ. LINZ does not assign to you any IP in any of the Data. You will, however, own all IP (upon its creation in material form) in any modification or derivative work you make to or from the Data, to the extent that new IP exists in that modification or derivative work.

**TERMS OF PAYMENT**

16 You agree to pay by cheque the fee specified in the Order Form, (plus any other applicable taxes, imposts or levies).

17 Payment is to be made in advance for the first supply of the Data, and is to be enclosed with the Order Form. Payment for any subsequent supply of the Data under this Agreement will be payable by the 20th day of the month following the date of issue by LINZ of an invoice for the supply of the Data.

18 Supply of the Data will be withheld in the event that payment for any previous supply of the Data is overdue.

19 LINZ shall not be held responsible or liable (whether in tort (including negligence), contract, equity or on any other basis) for any losses incurred through your sending of any payment by mail or courier.

## **PRIVACY**

- 20 You acknowledge that any information supplied by you to LINZ may be used for any purpose in connection with the ordering or delivery of, or payment for, the Data (and may be used by LINZ for, among other things, credit checking and debt collection). You authorise LINZ to use any information you supply, pursuant to this Agreement, for these purposes. If you are an individual, you may notify LINZ of any corrections which need to be made to the information you have supplied, and you may require access to any information LINZ holds about you. All such corrections and requests for access should be made in writing and sent to the LINZ address specified in the web-site.
- 21 You acknowledge that you must use the Data in a lawful manner at all times including by complying at all times with the Privacy Act 1993.

## **DELIVERY**

- 22 Sections 34(2), 34(3) and 44(1)(a) of the Sale of Goods Act 1908 do not apply to the delivery of the Data to you.
- 23 You must notify LINZ within thirty 30 days after receiving the Data of any shortage, divergence from specification or damage to the media during transit. If you do not do so, LINZ will not be liable for any such shortage, divergence or damage. Defective media will be replaced and/or such shortage, divergence or damage will be remedied within a reasonable time, provided you notify LINZ in accordance with this clause.
- 24 Risk in the Data shall pass to you upon delivery of the Data to your address specified in the Order Form.
- 25 LINZ does not guarantee that the Data specified in the Order Form will be supplied as requested.

## **NEW VERSIONS OF THE DATA**

- 26 LINZ may release, and make available for ordering, updated versions of the material and information comprising the Data ("New Versions"). The frequency of the availability of such New Versions will be set out in documentation available on the LINZ web-site. You will not be entitled to receive such New Versions unless you order them in the manner prescribed in your original Order Form or in a new Order Form or in the web-site and pay the fees (plus any other applicable taxes, imposts or levies) then specified in the web-site. Supply of the New Version shall be subject to clause 5 of this Agreement and to the terms set out in the web-site as at the date of that supply.

## **CHANGES TO TERMS AND CONDITIONS**

- 27 From time to time, LINZ may wish to vary the terms and conditions of this Agreement. LINZ will advise you of the changes, and that data will no longer be provided under the old terms and conditions. To obtain further supplies of the data you will need to sign a new agreement. LINZ will use reasonable efforts to place an announcement on the web-site prior to the new terms and conditions coming into effect.

## **GENERAL**

- 28 You agree that:
- 28.1 these terms, along with the Order Form and any written notices, cautionary notes and disclaimers contained in the Data, constitute the entire agreement between you and LINZ. Any other agreement (oral or written), correspondence and other documentation relating to the Data or other subject matter of this Agreement, and not

- expressly referred to in this Agreement, is superseded and extinguished by this Agreement.
- 28.2 all warranties, terms and conditions which are implied into contracts by equity, common law or statute are expressly excluded from this Agreement to the fullest extent permitted.
- 28.3 all differences and disputes arising in relation to or out of or in connection with this Agreement, or your use/copying/modification/creation of compilations or derivative works from or of the Data, or your on-supply of the Data, will be determined in accordance with the Arbitration Act 1996 (excluding clauses 4 and 5 of the Second Schedule). If the parties cannot agree on an arbitrator within 5 business days of either party notifying the other of its desire to refer the matter to arbitration, the arbitrator shall be appointed by the then President of the New Zealand Law Society.
- 28.4 any notice or request to be given under this Agreement shall be in writing addressed to the party to whom it is to be sent, at the address or facsimile number from time to time designated by that party in writing to the other. Until either party advises the other in writing of a change in its contact details, the address and facsimile number for service of notices to that party shall be as specified in the Order Form or (in respect of LINZ) the web-site. A notice or request:
- (a) delivered by hand, will be deemed received at the time of delivery;
  - (b) delivered by prepaid post, will be deemed received 2 business days after posting unless such posting is via international mail, in which case receipt will be deemed to occur 10 business days after posting;
  - (c) sent by facsimile, will be deemed received on the day of transmission, provided that if any deemed date of receipt is not a business day in the country where receipt will occur, receipt shall be deemed to occur on the next business day after that date.
- 28.5 neither party shall be liable for any failure to perform its obligations (other than to pay money) under this Agreement, if such failure arises from an event beyond that party's reasonable control. Such events include, without limitation, any act of God, fire, strike, embargo, loss of power of essential services, lack of or inability to obtain raw materials, labour, fuel or other supplies, or the adoption or enactment of any law or regulation directly or indirectly interfering with or rendering more burdensome the manufacture or delivery of the Data. LINZ may, by notice in writing to you, cancel any order at any time before delivery, due to circumstances beyond its control, and LINZ will not be liable in any way if it does so.
- 28.6 references to either party to this Agreement include the successors and any permitted assigns of that party. Where the context permits, references in this Agreement to "LINZ" shall also be references to any duly authorised agent or subcontractor of Her Majesty the Queen in right of New Zealand acting by and through Land Information New Zealand. A reference to a "person" includes a corporation sole, and also a body of persons, whether corporate or unincorporate.
- 28.7 no failure, delay or indulgence by any party in exercising any power or right conferred on that party by this Agreement shall operate as a waiver of such power or right. Nor shall a single exercise of any such power or right preclude further exercises of that power or right or the exercise of any other power or right under this Agreement.
- 28.8 if any part of this Agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Agreement which shall remain in full force.

28.9 in the event of a conflict between any parts of this Agreement, then for the purposes of interpretation, these terms shall have first priority, followed by the disclaimers, notice and cautionary notes set out in the Data, followed by the Order Form.

28.10 this Agreement shall be governed by, and construed in accordance with, the laws of New Zealand. Subject to clause 28.3, the parties submit to the jurisdiction of the New Zealand courts in respect of any dispute or difference arising under or in connection with this Agreement.

**EXECUTION**

**Signed** this \_\_\_\_\_ day of \_\_\_\_\_ 200 \_\_\_\_

for Her Majesty the Queen under delegation by the Chief Executive in the presence of:

\_\_\_\_\_  
(Signature of person signing)

\_\_\_\_\_  
(Full name of person signing)

\_\_\_\_\_  
(Witness signature)

\_\_\_\_\_  
(Full name of witness)

\_\_\_\_\_  
(Witness address)

**Signed** this \_\_\_\_\_ day of \_\_\_\_\_ 200 \_\_\_\_

by the Licensee in the presence of:

\_\_\_\_\_  
(Signature of person signing)

\_\_\_\_\_  
(Full name of person signing)

\_\_\_\_\_  
(Witness signature)

\_\_\_\_\_  
(Full name of witness)

\_\_\_\_\_  
(Witness address)