

SCHEDULE A:

Application for an End User Licence Relating to Gazetteer of Australia 2004 Release

INTRODUCTION

Schedules A, B, B1 and C represent the complete application/order form for a Licence to use the Gazetteer of Australia 2004 Release Data.
Read all four schedules carefully. Please print or type your specific details and requirements on Schedule A.

1 CUSTOMER DETAILS

(To be completed by the Customer)

Name or Organisation

Address

Contact Officer

Telephone

Facsimile

2 DELIVERY DETAILS

(If same as Customer details, write 'As above')

Name of Organisation

Address

Contact Officer

Telephone

Facsimile

3 CATEGORY OF LICENCE SOUGHT

(See Schedule B for definition of category)

- | | |
|------------------------------------------------|-------------------------------------------------------|
| <input type="checkbox"/> Single Use (\$540) | <input type="checkbox"/> Single Use Upgrade (\$100) |
| <input type="checkbox"/> Multiple Use (\$1080) | <input type="checkbox"/> Multiple Use Upgrade (\$200) |
| <input type="checkbox"/> Internet Use (\$1620) | <input type="checkbox"/> Internet Use Upgrade (\$300) |

(Upgrade licences are only applicable to licence holders upgrading from the previous version of the Gazetteer)

4 PRINCIPAL LICENCE CONDITIONS

(See Schedule C - *Conditions of Licence Relating to Gazetteer of Australia 2004 Release* and Schedules B and B1 for a full list of definitions and conditions)

The Customer has sighted Schedule C - *Conditions of Licence Relating to Gazetteer of Australia 2004 Release* and Schedules B and B1 which set out the terms and conditions of the Licence and accepts these terms and conditions.

A summary of the principal conditions is given below:

- Copyright in the Data is owned by the various State, Territory and Commonwealth governments and authorities represented by the Custodians (Schedule B1).
- A licence fee, as determined by the Custodians will be paid prior to delivery of the Data.
- Single use of the Data is restricted to one user at any one time. Multiple use of the data is restricted to any number of users within the Organisation named in Schedule A. Internet use of the data is restricted to providing Internet based access to specifically requested records, not the distribution of the data.
- The Data, or any product derived from the Data, either digital or hard copy, must not be sold, given away, traded, let, hired or otherwise dealt with, unless the prior permission of the Distributor has been granted.
- Should the Customer wish to use the Data commercially, a special Licence for this purpose must be obtained from the Distributor.
- The Customer is permitted to use the Data in demonstrations and displays, provided that a statement acknowledging that the Data are copyright is shown on the demonstrated or displayed product.
- Either the Customer or the Distributor may terminate the Agreement under the conditions as specified in Schedule C - *Conditions of Licence Relating to Gazetteer of Australia 2004 Release*.

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5 THE DATA

This licence is for the Gazetteer of Australia 2004 Release Data supplied as ASCII text files and Microsoft Access Database on CD ROM.

6 PAYMENT DETAILS

- Purchase Order Number:
- Cheque / Money Order
- Bankcard
- Visa
- Mastercard
- American Express

Cardholder name:

Account number:

Expiry date:

Authorised Signature

Total Licence Fee (to be specified by Distributor)

7 AUTHORISATION

I have read Schedules B and B1 and Schedule C - *Conditions of Licence Relating to Gazetteer of Australia 2004 Release* and agree to the terms and conditions therein. Signed for and on behalf of the Customer

Printed name

Position held / title

Dated

HOW TO LODGE THIS APPLICATION

Send or deliver this application to any Custodian or to Geoscience Australia's Data Sales area. Your order will then be sent to you with a copy of the agreement.

If the data is required urgently, you may send your application by facsimile. To confirm the order, you must also send the original application separately by post or courier.

Data Sales
Geoscience Australia
GPO Box 378, Canberra ACT 2601
Telephone: +61 2 6249 9966
Facsimile: +61 2 6249 9960
Freecall (within Australia): 1800 800 173

SCHEDULE B

Definitions

"Agreement" means the Agreement constituted by **Schedule A**, when read in conjunction with this **Schedule B**, **Schedule B1** and the Licence Conditions specified in **Schedule C**.

"Geoscience Australia" means the agency of the Commonwealth of Australia known as the National Mapping Division of Geoscience Australia, and includes any agency which succeeds to the functions of that agency.

"Commercialise" in respect of the Data or a product or service derived from the Data, includes distributing, giving away, selling, letting for hire, or by way of trade, offering or exposing for sale or hire any article embodying the Data or any product or service derived from or incorporating the Data.

"Custodian" means each of the individual State, Territory and Commonwealth governments and authorities named in **Schedule B1** below.

"Customer" means the person or organisation specified in **Schedule A** of the Agreement

"Data", in relation to a particular Licence Agreement, means the Data, the subject of **Schedule A**, current at the date of delivery.

"Distributor" means Geoscience Australia.

"Intellectual Property" includes all copyright, and all rights in relation to registered and unregistered trademarks (including service marks), registered designs and confidential information (including trade secrets and know-how), and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

"Internet Use" means use of the Gazetteer of Australia 2004 Release Data in an internet based application that provides access to query the Data either as the prime function or as a function called in support of a different prime function. Specifically excludes the dissemination of the Data via downloads.

"Licence", in relation to a particular Licence Agreement, means the Licence provided for in Condition 3 of the Licence Conditions in **Schedule C**.

"Licensee", in relation to a particular Licence Agreement, means the Customer.

"Licence Agreement" means an Agreement between the Distributor and the Customer, incorporating the Licence Conditions, for the supply of the Data, specified in **Schedule A** of the Agreement.

"Licence Conditions" means the "Conditions of Licence relating to Gazetteer of Australia 2004 Release", a copy of which is set out in **Schedule C**, and includes any revised version of that document which may be issued by Geoscience Australia from time to time.

"Multiple Use" means the simultaneous use of the Data on more than one:

- (a) stand-alone computer;
- (b) computer terminal on a computer network; or
- (c) item of electronic/mechanical equipment capable of viewing, interpreting, processing, manipulating or otherwise accessing the Data or any derivative data incorporating the Data.

"Person" includes a body corporate, incorporate, individual or a body politic.

"Single Use" means use of the Data on a single:

- (a) stand-alone computer;
- (b) computer terminal on a computer network; or
- (c) item of electronic/mechanical equipment capable of viewing, interpreting, processing, manipulating or otherwise accessing the Data or any derivative data incorporating the Data.

SCHEDULE B1

Custodians

Australian Capital Territory, ACT Place Names Officer, Office of the Chief Surveyor, ACT Planning and Land Authority, GPO Box 1908, CANBERRA ACT 2601, Phone: (02) 6205 0057, Fax: (02) 6207 1615

Australian Hydrographic Service, Nautical Information Officer, Australian Hydrographic Service, Royal Australian Navy, Locked Bag 8801, SOUTH COAST MAIL CENTRE NSW 2521, Phone: (02) 4221 8595, Fax: (02) 4221 8599

Geoscience Australia, Geographic Names Officer, National Mapping Division, Geoscience Australia, GPO Box 378, CANBERRA 2601, Phone: (02) 6249 9737, Fax: (02) 6249 9939

New South Wales, Secretary, Geographical Names Board of NSW, Dept. of Lands, PO Box 143, BATHURST NSW 2795, Phone: (02) 6332 8214, Fax: (02) 6332 8217

Northern Territory, Secretary, Place Names Committee, Dept. of Lands, Planning and Environment, PO Box 1680, DARWIN NT 0801, Phone: (08) 8999 6444, Fax: (08) 8999 7750

Australia Post, National Postcode Coordinator, GPO Box 1777Q, MELBOURNE VIC 3001

Queensland, Principal Cartographer (Place Names), Geographic Data Services, Department of Natural Resources and Mines, Locked Bag 40, Coorparoo Delivery Centre QLD 4151, Phone: (07) 3896 3222, Fax: (07) 3896 3165

South Australia, Secretary, Geographical Names Advisory Committee, Dept. for Administration and Information Services, GPO Box 550 MARLESTON SA 5033, Phone: (08) 8463 4727, Fax: (08) 8463 4733

Tasmania, Secretary, Nomenclature Board, Office of Surveyor General, Dept. of Primary Industries, Water and Environment, PO Box 44A, HOBART TAS 7001, Phone: (03) 6233 2554, Fax: (03) 6233 6775

Victoria, Land Victoria, Dept. of Sustainability and Environment, PO Box 500, EAST MELBOURNE VIC 3002, Phone: (03) 8636 2530, Fax: (03) 8636 2588

Western Australia, Secretary, Geographic Names Committee, Dept. of Land Information, PO Box 2222, MIDLAND WA 6936, Phone: (08) 9273 7198, Fax: (08) 9273 7674

SCHEDULE C

Conditions of Licence Relating to Gazetteer of Australia 2004 Release

- 1. Definitions**
 - 1.1 In these conditions, any expressions used shall have the meaning ascribed to them in **Schedule B**.
- 2. Duration**
 - 2.1 Subject to these conditions, the Licence shall take effect upon the date of the execution of the Licence Agreement and shall continue unless terminated in accordance with the Agreement.
- 3. Licence**
 - 3.1 The Distributor grants to the Licensee a non-exclusive, non-transferable licence to:
 - (a) use, reproduce and adapt the Data for internal purposes and, subject to Condition 8.2, permit consultants, contractors or subcontractors with which it has contracted for the provision of services to the Licensee to so use, reproduce and adapt the Data; and
 - (b) combine the Data with other data held by the Licensee. The Licensee will indemnify the Distributor if such combination or data combined with the Data infringes the copyright of any third person.
 - 3.2 Where it is stipulated in **Schedule A** that a Licence is to be for single or simultaneous multiple use, the Licensee may use, reproduce and adapt (but not Commercialise) the Data under the conditions applicable to the category of Licence specified in that Schedule.
 - 3.3 The rights granted herein are restricted solely to the Licensee and may not be assigned, transferred or sub-licensed without the prior written permission of the Distributor, which permission may be granted subject to any conditions which the Distributor may require.
- 4. Licence Fees**
 - 4.1 In consideration of the grant of the Licence the Licensee shall pay to the Distributor a licence fee as specified in **Schedule A** prior to delivery of the Data.
 - 4.2 The licence fee is exclusive of any taxes, duties or charges payable in respect of this Licence for the Data. Any duty or Sales Tax or any other governmental charges levied in respect of the Data or any other goods or services supplied pursuant to this Agreement shall be payable by the licensee.
- 5. Warranty**
 - 5.1 The Distributor does not warrant that the Data are free from errors. No performance standard can be guaranteed.
 - 5.2 The Distributor warrants that the grant of the Licence does not infringe the Intellectual Property rights of any person.
- 6. Delivery**
 - 6.1 The Data shall be supplied to the Licensee in the format specified in **Schedule A**.
- 7. Ownership**
 - 7.1 The Licensee acknowledges that the Custodians retain ownership of the Data, whether in its original form or as modified by the Licensee, and of the Intellectual Property rights therein.
 - 7.2 The Copyright notices appearing on the Data may not be removed or obscured and shall be included on any backup copies of the data or hard copy outputs.
- 8. Confidentiality**
 - 8.1 The Licensee shall, subject to Condition 8.2, treat the Data as private and confidential to the Licensee and shall maintain the Data in safe custody.
 - 8.2 The Licensee shall take all reasonable steps to ensure that any person, including sub-contractors employed by the Licensee, keeps the Data confidential and does not disclose the Data to any person or use the Data for any purpose, other than in accordance with the terms of this Agreement.
- 9. Release and Indemnity**
 - 9.1 The Licensee agrees to:
 - (a) release the Distributor, its employees, agents and contractors, and any person claiming under or through the Distributor, in respect of all liability for loss, damage or injury which may be suffered by it arising from the Licensee's use of the Data;
 - (b) indemnify the Distributor, its employees, agents and contractors, and any person claiming under or through the Distributor, in respect of all liability for loss, damage or injury, which may be suffered by any person arising from that person's use of the Data.
- 9.2 The provisions of this condition shall survive the early termination of the Licence Agreement.
- 10. Commercial Exploitation**
 - 10.1 The Licensee shall not Commercialise the Data or any product or service derived from or incorporating the Data, unless it has first obtained the written consent of the Distributor. The Distributor may grant or refuse their consent in their absolute discretion and may grant consent subject to any condition or conditions whatsoever, including the payment of royalties.
- 11. Termination**
 - 11.1 The Licence Agreement may be terminated:
 - (a) if either party breaches any of the terms of the Agreement and fails to remedy the breach within one month of a written notice from the other party specifying the breach and requesting the remedying thereof;
 - (b) by either party by giving the other party one month's written notice of termination of the Agreement.
 - 11.2 The termination of the Licence Agreement under clause 11.1 shall be without prejudice to the rights of either party for moneys due under the Agreement prior to termination.
 - 11.3 The Licensee shall cease using the Data for any purpose from the date of termination of the Licence Agreement and shall return the Data, any data derived from the Data, and any copies made of either of them to the Distributor within 30 days of the date of termination.
- 12. Entire Agreement**
 - 12.1 The Licence Agreement shall supersede all prior agreements and undertakings between the parties relating to the Data and constitutes the entire agreement between the parties. No addition to or modification of any provision of the Agreement shall be binding upon the parties unless made by written instrument.
- 13. Notices**
 - 13.1 All notices which are required to be given under the Licence Agreement shall be in writing and shall be:
 - (a) delivered to the other party personally; or
 - (b) sent by facsimile to the facsimile number of the other party, in which case notice shall be deemed to have been received on the receipt of confirmation from the answering machine; or
 - (c) forwarded by registered mail to the address of the other party, in which case notice shall be deemed to have been received 48 hours after it was posted.
 - 13.2 Addresses and facsimile numbers of the parties to the Licence Agreement, shall be as specified in **Schedule A**, and **Schedule B1** or as otherwise notified during the currency of the Agreement.
- 14. Assignment**
 - 14.1 The Licensee shall not assign, whether in whole or part, the benefit or burden of the Licence Agreement, without the prior written consent of the Distributor.
- 15. Law**
 - 15.1 The Licence Agreement shall be governed by and construed in accordance with the laws for the time being in force in the Custodian's State or Territory.
- 16. Waiver**
 - 16.1 No forbearance, delay or indulgence by a party in enforcing the provisions of the Licence Agreement shall prejudice or restrict the rights of that party, nor shall waiver of those rights operate as a waiver of any subsequent breach.
- 17. Application**
 - 17.1 Where the Distributor and the Licensee are agencies of the Commonwealth of Australia, such that neither is permitted to enter into a binding legal agreement except as the Commonwealth, then the Licence Conditions stated herein shall be read as giving rise merely to an arrangement.