

Researcher Licence Agreement: Public Sector Mapping Agency

AURIN CLICKWRAP RESEARCH LICENCE AGREEMENT

This is a legal licence agreement between You and PSMA Distribution regarding your use of the PSMA Data.

By installing or otherwise using any part of the PSMA Data, You agree to be bound by the terms of this Agreement. If You do not agree with the terms of this Agreement You must not install or use the PSMA Data in any way.

If you have any questions about this Agreement, please contact PSMA Distribution via enquiries@psma.com.au or (02) 6260 9013.

IT IS AGREED

1. Proper Consideration

- 1.1. You acknowledge that Your acceptance of the terms of this Agreement is proper consideration for the grant of the Licence.

2. Grant of Licence

- 2.1. PSMA Distribution grants You a non-exclusive, non-transferable licence to use the PSMA Data for the Access Term solely for the purpose of undertaking University approved urban resource use and management research as part of the Australian Urban Research Infrastructure Network (**the Research**).
- 2.2. Any rights not specifically granted in this Licence are reserved to PSMA Distribution.

3. Licence Conditions

- 3.1. You must not:
 - a. commercially exploit the PSMA Data or any material developed from the use of the PSMA Data under this Licence;
 - b. allow any other person access to the PSMA Data without the prior, written consent of PSMA Distribution (which may be withheld in its absolute discretion);
 - c. use PSMA Data in any way other than by Embedded Access to the PSMA Data via any environment provided by the University.
 - d. Access more than 25,000 Full Access address records derived from the PSMA Data or 50mb of Full Access PSMA Data whichever is the lesser; use or deal with the PSMA Data in any way that is likely to adversely affect the Intellectual Property Rights of PSMA Distribution or PSMA in the PSMA Data or PSMA Distribution's or PSMA's reputation; or
 - f. publish, license or otherwise distribute (whether for consideration or not) PSMA Data (including, for example, address details, XY coordinates or vector format data) over an open electronic network (including the internet).
- 3.2. You will provide PSMA Distribution with suggestions to correct any errors You detect in the PSMA Data at no charge.

4. Security of PSMA Data

- 4.1. You must at all times:
 - a. ensure the proper and secure storage of the PSMA Data and any information about the design, specification or content of the PSMA Data;
 - b. take all reasonable steps to protect the PSMA Data from misuse, damage or destruction; and
 - c. ensure that any copies of the PSMA Data are dealt with in accordance with PSMA Distribution's reasonable directions.

5. Labelling of PSMA Data

- 5.1. You must ensure that any copy or expression, including in material form, of the PSMA Data retains the copyright notice and PSMA thumbprint that is present on the PSMA Data at the time PSMA Distribution provides it to You.
- 5.2. You must comply with any reasonable directions of PSMA Distribution regarding the form and content of any copyright notice, PSMA thumbprint and/or disclaimer that is to appear on the PSMA Data.

6. Licence Fees

- 6.1. Any fees payable to PSMA Distribution for this Licence have been met by the University of Melbourne (however You may be liable for fees to the University of Melbourne) in its capacity as the lead agent administering the Australian Urban Research Infrastructure Network.

7. Intellectual Property Rights

- 7.1. You acknowledge and agree that there is no transfer to You of ownership of, or Intellectual Property Rights in, the PSMA Data or any copies, updates, new releases, modifications or alterations (including by way of Thinning or manipulation) of the PSMA Data.

8. Infringement of Intellectual Property Rights

- 8.1. You must notify PSMA Distribution as soon as practicable if You become aware:
 - a. of any actual, suspected or anticipated infringement of Intellectual Property Rights in the PSMA Data; or
 - b. that use of the PSMA Data infringes, or is suspected or alleged to infringe, the Intellectual Property Rights of any person.
- 8.2. PSMA Distribution will decide what action, if any, to take in relation to the actual, suspected or alleged infringement, is responsible for the payment of all legal and associated costs and is entitled to keep any award of damages or account of profits.
- 8.3. You must render all reasonable assistance to PSMA Distribution in relation to any litigation regarding the infringements referred to in clause 8.1.

9. Confidentiality

- 9.1. You acknowledge that You will have access to valuable commercial information of PSMA Distribution, including Confidential Information.
- 9.2. You must take all reasonable steps to maintain and safeguard the confidentiality of the information referred to in clause 9.1, including ensuring that Your employees maintain the confidentiality of that information and use it solely for the purposes of undertaking the Research.
- 9.3. You agree to provide access to the PSMA Data to only Your employees who need access for the purpose of exercising Your rights under this Agreement.

10. Privacy

- 10.1. The Parties acknowledge that the PSMA Data does not on its own constitute Personal Information.
- 10.2. You agree:
 - a. not to do any act or engage in any practice using the PSMA Data that would breach the Privacy Act 1988 (Cth); and
 - b. to comply with any direction of PSMA Distribution to observe any recommendation of the Privacy Commissioner relating to Your acts or practices that the Privacy Commissioner considers to be in breach of the obligations in this clause.

11. Implied Terms

- 11.1. All statutory or implied conditions and warranties are excluded to the extent permitted by law, including in respect of the state, quality or condition of the PSMA Data.
- 11.2. To the extent permitted by law, liability under any condition or warranty which cannot legally be excluded is limited to the supply by PSMA Distribution of equivalent property or the replacement by PSMA Distribution of the PSMA Data.
- 11.3. You acknowledge that You do not rely (and that it is unreasonable for You to rely) on the skill or judgment of PSMA Distribution as to whether the PSMA Data is reasonably fit for any purpose for which it is being licensed.
- 11.4. You agree that PSMA Distribution and PSMA have no liability (including liability in negligence) to You for any loss or damage, consequential or otherwise, suffered or incurred by You caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind in the PSMA Data and/or advice, recommendation, information or services provided to You by PSMA Distribution.

12. Warranties

- 12.1. PSMA Distribution represents and warrants that it has and will retain all necessary rights to grant the Licence.
- 12.2. You represent and warrant to PSMA Distribution that:
 - a. You are empowered to enter into this Agreement on Your behalf and to do all things that will be required by this Agreement;
 - b. all things have been done (including all authorisations) as may be necessary to render this Agreement legally enforceable in accordance with its terms and fully valid and binding on You; and
 - c. You have not relied on any representation made by PSMA Distribution which has not been stated expressly in this Agreement, or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by PSMA Distribution or PSMA.

13. Indemnity

- 13.1. You indemnify and hold harmless PSMA Distribution, PSMA and their officers, employees and agents, ("those indemnified") from and against any damages, loss (including loss of profits and any other consequential loss), costs, expenses (including legal costs and expenses) or liability incurred or suffered by any of those indemnified arising from:
 - a. any claim from a third party alleging infringement of their Intellectual Property Rights and which arises from use of the PSMA Data in a manner or for a purpose not reasonably contemplated or not authorised by PSMA Distribution under this Agreement;
 - b. a breach of Your obligations under this Agreement; or
 - c. any wilful, unlawful or negligent act or omission by You.

14. Changes to Legislation

- 14.1. Notwithstanding any other provision of this Agreement, You acknowledge and agree that PSMA Distribution and/or You must comply with any future legislation and/or government policy which imposes binding restrictions or limitations on PSMA Distribution's or Your use of the PSMA Data, including any restrictions or limitations relating to the supply of PSMA Data or

elements thereof to any person, and the terms of this Agreement will be varied accordingly.

15. Audit

- 15.1. During the Access Term and for a period of twelve (12) months after termination or expiration of this Agreement, on at least ten (10) Business Days notice to You, PSMA Distribution is entitled itself, or through its representatives, to audit Your books, records and systems for the sole purpose of confirming Your compliance with Your obligations under this Agreement.
- 15.2. Any such audit will be at PSMA Distribution's cost and conducted during normal business hours.
- 15.3. You must give all assistance necessary to PSMA Distribution (and its representatives) to carry out the audit and permit the taking of copies of any relevant records.

16. Term and Termination

- 16.1. Subject to earlier termination, this Agreement will expire at the end of the Access Term.
- 16.2. PSMA Distribution may without cause, at any time, terminate this Agreement and the Licence granted pursuant to it by giving five (5) Business Days notice to You in writing. You must do all that is possible to mitigate Your losses arising from the early termination of this Agreement.
- 16.3. Upon expiry or termination of this Agreement, You must, at PSMA Distribution's election, either return to PSMA Distribution or destroy any copies of the PSMA Data in Your possession, custody or control.

17. Disputes

- 17.1. Any dispute arising in connection with this Agreement which cannot be settled by negotiation between the Parties or their representatives must be formally referred to the respective Managing Directors or Chairpersons of each Party.
- 17.2. Subject to clause 17.3, before resorting to arbitration or litigation, the Parties must in good faith explore the prospect of mediation.
- 17.3. Nothing in this clause prevents a Party from seeking urgent equitable relief before an appropriate court.

18. Miscellaneous

- 18.1. **Relationship:** This Agreement must not be construed as a joint venture or partnership. The relationship between the Parties is that of independent contractors only. You do not have any authority to bind PSMA Distribution in any respect nor to incur any liability or make any commitment on behalf of PSMA Distribution without PSMA Distribution's prior written consent.
- 18.2. **Assignment and Novation:** You may not assign the benefit of this Agreement without PSMA Distribution's prior written consent. PSMA Distribution may in its absolute discretion consent to the assignment or novation of this Agreement by You subject to such reasonable conditions as PSMA Distribution chooses to impose. You will consent to the novation of this Agreement as required by PSMA Distribution.
- 18.3. **Waiver:** No right under this Agreement will be deemed to be waived except by notice in writing signed by each Party. A waiver made by PSMA Distribution pursuant to this clause will not prejudice its rights in respect of any subsequent breach of this Agreement by You.
- 18.4. **Variation:** The provisions of this Agreement must not be varied except by agreement in writing signed by the Parties.
- 18.5. **PSMA Distribution's Rights:** Any express statement of a right of PSMA Distribution under this Agreement

- is without prejudice to any other right of PSMA Distribution not expressly stated in this Agreement or existing at law.
- 18.6. **Survival of Agreement:** The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration or termination of this Agreement must remain in full force and effect following the expiration or termination of this Agreement.
- 18.7. **Severability:** If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.
- 18.8. **Entire Understanding:** this Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.
- 18.9. **Governing Law:** The law of Australian Capital Territory governs this Agreement and the Parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and the Federal Court of Australia.
- 18.10. **Notices:** Notices under this Agreement may be delivered by prepaid postage, certified mail, by fax transmission or by email transmission. Notices are deemed given five (5) Business Days after deposit in the mail with postage prepaid or certified, or if sent by fax or email transmission upon completion as evidenced by a fax or email transmission record. Where notice is given by fax or email the original document must be posted on the same day as the transmission is sent.
- 19. Definitions**
- 19.1. In this Agreement, unless the contrary intention appears:
- a. **"Access Term"** means the period from the date of You agree to be bound by the terms of this Agreement to the date of completion of the Research or 30 June 2015, whichever is the sooner;
 - b. **"Agreement"** means this licence agreement;
 - c. **"Business Day"** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
 - d. **"Confidential Information"** means all information or knowledge of PSMA Distribution or PSMA in whatever form (whether oral, written or embodied or residing in any document, equipment or any other medium whether in documentary, visual, machine readable or other form), which:
 - i. Is by its nature confidential;
 - ii. Is designated by PSMA Distribution or a third party as confidential; or
 - iii. You know or ought to know is confidential; but does not include information which is publicly available or required to be disclosed by law;
 - e. **"Embedded Access"** means that a Researcher or User cannot alter, export or extract PSMA Data including, but not limited to, tables, fields records, attributes, content, and metadata that is included in the PSMA Data without express permission of PSMA Distribution;
 - f. **"Full Access"** is access to any attribute of PSMA Data either unchanged, modified or contained within any other data product;
 - g. **"Intellectual Property Rights"** means all intellectual property rights including rights of any kind in:
 - i. inventions, discoveries and novel designs (whether or not registrable as patents or designs);
 - ii. copyright (including future copyright) in all literary works, artistic works, computer software and other work or subject matter in which copyright subsists or may in the future subsist;
 - iii. any database protection rights whether arising under statute or otherwise;
 - iv. trade secrets; or
 - v. trade and service marks (whether registered or unregistered);
 - h. **"Licence"** means the licence to use the Intellectual Property Rights comprised in the PSMA Data, in accordance with this Agreement, together with any rights in relation to the PSMA Data given to You by this Agreement;
 - i. **"Party"** means either PSMA Distribution or You as the context dictates;
 - j. **"Personal Information"** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion (and includes any information obtained as a result of use of the PSMA Data in conjunction with third party data);
 - k. **"PSMA"** means PSMA Australia Limited (ABN 23 089 912 710) of Unit 6, 113 Canberra Avenue, Griffith in the Australian Capital Territory;
 - l. **"PSMA Data"** means the following data sets:
 - i. G-NAF;
 - ii. CadLite;
 - iii. Land Tenure;
 - iv. Features of Interest;
 - v. Points of Interest;
 - vi. Postcode Boundaries;
 - vii. Administrative Boundaries; and
 - viii. Transport and Topography, (or any part of them);
 - m. **"PSMA Distribution"** means PSMA Distribution Pty Limited (ABN 89 131 984 800) of Unit 6, 113 Canberra Avenue, Griffith in the Australian Capital Territory;
 - n. **"Research"** means the research described in clause 2.1;
 - o. **"Thinning"** means computer manipulation of digital spatial data so as to reduce the computer storage space required by the data which is achieved by deleting intermediate or redundant data points defining a linear feature or boundary whilst preserving the general shape fidelity of the boundary or feature; and
 - p. **"University"** means the University of Melbourne (ABN 84 002 705 224) being a body politic and corporate constituted under the *University of Melbourne Act 2009* (Vic) of Parkville in the State of Victoria in its capacity as the lead agent administering AURIN;
 - q. **"You"** means either:
 - i. the person on whose behalf you are acting as an authorised representative (for example, your employer or research organisation); or
 - ii. if you are not an authorised representative of another person, you as an individual, being licensed to use the PSMA Data under this Agreement.

20. Interpretation

20.1. In this Agreement, unless the contrary intention appears:

- a. the clause headings are for ease of reference only and must not be used for interpretation;
- b. words in the singular include the plural and vice versa;
- c. a reference to a person includes bodies corporate and unincorporated associations and partnerships;
- d. where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- e. the word "includes" is not a word of limitation; and
- f. each provision of this Agreement will be interpreted without disadvantage to the party who (or whose representative) drafted that provision.