

August 2019

Terms of Use

This NSW Point Terms of Use Agreement (“Agreement”) is between the Department of Customer Service (“DCS”) [ABN 81 913 830 179], McKell Building 2-24 Rawson Place, Sydney NSW 2000 and the entity entering into this Agreement (“Customer”).

If you are an individual entering into this Agreement on behalf of the Customer, you represent that you have the authority to bind it. In that case, the terms “you” or “your” also refer to the Customer. This Agreement governs the Customer’s access to and use of NSW Point (“the Service”), as requested in the applicable Service Request form.

By accepting this Agreement or by accessing or using the Service, you agree to be bound by this Agreement (including other documents which are incorporated in it by reference). This Agreement is effective on the date you accept this Agreement or access or use the Service (“Effective Date”) including to evaluate it, whichever occurs first.

If a Customer registers for a free trial of NSW Point for evaluation purposes, the applicable provisions of this Agreement will also govern the free trial.

1. The Service

- 1.1. PSMA Australia Limited (“PSMA”) has entered into an agreement (“PSMA Agreement”) with the State of New South Wales (“NSW”) as represented by Spatial Services Division (“SS”) of the Department of Customer Service.
- 1.2. Under the PSMA Agreement, PSMA supplies PSMA’s spatial and address services (“API Services”) to NSW and authorises SS to use and access the API Services and to provide such use and access to NSW Government Agencies.
- 1.3. SS utilises the PSMA Data and API Services to provide geocoded address data and address validation services, known as NSW Point, to assist NSW Government Agencies’ customer services and business processes.
- 1.4. New Features or Services: SS may make new applications, features or functionality for the Service available from time to time, the use of which may be contingent upon the Customer’s agreement to additional terms.
- 1.5. Modifications:
 - (a) Changes to the Service: SS may make commercially reasonable changes to the Service from time to time. If SS makes a material change to the Service, SS will inform the Customer, by sending an email to the Nominated Contacts’ email address.
 - (b) Deprecation Policy: SS will notify the Customer if it intends to make a significant depreciation of a Service. SS will use commercially reasonable efforts to continue to provide the Service without a significant depreciation for at least 12 months after that notification, unless (as SS determines in its reasonable good faith judgement): (i) otherwise required by law or by contract (including if there is a change in applicable law or contract); or (ii) doing so could create a security risk or a substantial economic or technical burden.
 - (c) Discontinuance of the Service: Subject to clause 1.5(b), SS can discontinue any Service or any portion or feature for any reason at any time without liability to the Customer.
- 1.6. NSW Service Point: The Customer will automatically be enrolled in the NSW location-based reporting project. The Customer Service Cluster, in conjunction with agencies, is developing a new location-based reporting process to enhance service planning across NSW.
- 1.7. Copyright and disclaimer: You agree and acknowledge that PSMA’s copyright and disclaimer terms (<https://www.psma.com.au/psma-data-copyright-and-disclaimer>) PSMA form part of this Agreement. The Customer must: (i) ensure that any copy or expression of PSMA Data or derivative material made available pursuant to this Agreement bears or appropriately refers to such copyright and disclaimer information at least as prominently as any similar reference to other

copyright information included by the Customer; (ii) not remove any such copyright and disclaimer information embedded in the Service's responses; and (iii) promptly take all reasonable steps to assist SS to comply with any reasonable direction given by PSMA relating to the form and content of such copyright and disclaimer information.

2. Access to the Service

- 2.1. SS will provide the Customer with non-exclusive, non-transferable access to the Service during the Term in accordance with this Agreement.
- 2.2. SS will provide a TEST Service ID to the Customer to use to evaluate the Service. TEST Service ID(s) are for evaluation only and made available for 60 days and may be restricted to (i) 100 requests per second; (ii) 100 requests in a burst; and (iii) 20,000 requests per day. Information on how to implement the Service can be located at https://point.six.nsw.gov.au/NSWPoint_Widget_Installation_Guide.html.
- 2.3. SS will provide a PRODUCTION Service ID to the Customer to use the Service for the Term. PRODUCTION Service IDs are issued per Customer application or Customer, and must not be used for multiple applications without the written consent of SS.

3. Term

- 3.1. This Agreement terminates any prior agreement between SS and the Customer for the supply of the Service and comes into force on the Effective Date.
- 3.2. Unless terminated earlier, this Agreement will terminate on the first of the following to occur:
 - (a) the termination of the PSMA Agreement or any associated rights of SS under it;
 - (b) in the case of an evaluation - 60 days or the completion of the evaluation; and
 - (c) midnight on 12 October 2020, subject to any extension to the Term agreed by the Parties in writing.

4. Termination

- 4.1. Either Party may terminate this Agreement by giving to the other Party at least 30 days' (or in the case of an evaluation, 5 days') written notice of termination.
- 4.2. Either Party may terminate this Agreement immediately by giving written notice of termination to the other Party if the other Party commits a material breach of this Agreement.
- 4.3. Either Party may terminate this Agreement immediately by giving written notice of termination to the other Party if either Party is dissolved or ceases to exist as a NSW Government Agency (other than due to a machinery of government change).
- 4.4. Within five (5) Business Days of the termination of this Agreement:
 - (a) SS will remove the Service from the Customer by cancelling all Service IDs automatically unless an extension has been agreed in writing before the termination of this Agreement; and
 - (b) the Customer must remove any Service IDs from the applications.

5. Customer Obligations

- 5.1. Compliance: The Customer must ensure that all use of the Service by the Customer and its End Users complies with this Agreement.
- 5.2. Customer Administration of the Service: The Customer and its representatives must:
 - (a) not distribute the Service to parties outside of the Customer;
 - (b) ensure that all activities that occur in connection with the Service IDs comply with this Agreement.
- 5.3. The Customer agrees that SS's responsibilities do not extend to the internal management or administration of the Service for the Customer and that SS is merely a data processor and provider of the Service.
- 5.4. Unauthorised Use: The Customer will use commercially reasonable efforts to prevent unauthorised use of the Service (including PSMA Data and Service IDs) and to terminate any unauthorised use. The Customer will promptly notify SS of any known or suspected unauthorised use of, or access to, the Service or PSMA Data.

5.5. **Restrictions on Use:** Unless SS specifically agrees in writing, the Customer will not, and will use commercially reasonable efforts to make sure a third party does not:

- (a) sell, resell, lease, or in other way make available, the Service to a third party not under this Agreement;
- (b) attempt to reverse engineer the Service or any component;
- (c) attempt to create a substitute or similar service through use of, or access to, the Service;
- (d) use the Service for mission critical activities;
- (e) keep sensitive information confidential and not disclose that information to any third party without written permission of the disclosing party except as provided by this Agreement;
- (f) not to do anything that would cause a breach under the Privacy Legislation.

5.6. **Excessive Use:** The Customer must monitor its use of the Service during the evaluation of the Service and the Term. The Customer must use commercially reasonable efforts to prevent excessive use of the Service during the evaluation of the Service and the Term and must inform SS if the forecasted volume of transactions is likely to exceed 10 million across a 12-month period. If the Customer excessively uses the Service, it may have to indemnify SS under clause 11 in respect of fees and charges payable by SS to PSMA under the PSMA Agreement arising from that excessive use.

5.7. **Confidentiality:** The Customer must maintain the confidentiality of its Service ID(s).

5.8. **Support:** The Customer will, at its own expense, respond to questions and complaints from End Users or third parties relating to Customer or End Users' use of the Service. The Customer will use commercially reasonable efforts to resolve support issues before escalating them to SS.

5.9. **Nominated Contacts:** The Customer must provide SS with a Nominated Contact(s) who will be responsible for receiving all notifications from SS concerning the Service. The Customer must nominate up to two (2) Contacts per PRODUCTION Service ID issued.

5.10. **Notification of breach:** Without limiting clause 5.4, the Customer must immediately notify SS in writing upon becoming aware of or suspecting any breach of the Service by it or its End Users, and take all reasonable steps to stop or investigate (as applicable) the breach and/or further breaches.

5.11. **Privacy:** The Customer must promptly comply with the reasonable directions of PSMA or SS as to use of the Service and with the recommendations of the NSW Privacy Commissioner or NSW Ombudsman.

5.12. **Security and storage:** Without limiting clause 5.4, the Customer must maintain adequate security and storage measures. In particular, it must minimise the risk of transmission of, or infection by, viruses and cooperate with SS in this regard, including comply with the reasonable directions of SS or PSMA. The Parties will take all reasonable steps to assist one another if an infection occurs.

5.13. **Errors:** The Customer must promptly notify SS of any errors in PSMA Data of which it becomes aware.

5.14. **Conduct:** The Customer must not engage in conduct which is or is likely to be detrimental to the name, goodwill, reputation or interest of PSMA or SS.

5.15. **Review:** If PSMA requires SS to conduct a review of the Customer's books, records and systems to confirm compliance of NSW with the PSMA Agreement, the Customer must permit SS to do so and promptly provide all reasonable assistance to SS.

6. Payment

6.1. The Customer is not liable to pay fees in respect of its real time Transactions involving access to NSW Point web services for the Term subject to clause 5.6 (Excessive Use). SS's measurement tools will be used to determine the Customer's usage of the Service.

6.2. If the Customer wishes to have SS process a NSW Point batch transaction, it should email SS-NSWPoint@finance.nsw.gov.au for more details, including, if necessary, clarification of transactions appropriate for batch transaction processing. SS reserves the right to charge a fee for processing any NSW Point batch transaction and will provide that fee to the Customer in a quote before commencing work.

6.3. Despite clause 6.1, SS in its absolute discretion may impose a fee for access to and use of the Service if a change in circumstances (including imposed or increased charges by PSMA or any third party supplier of the data or services underlying the Service or a change in the terms of the PSMA Agreement or any contract with any third party supplier) makes it commercially unviable to continue to provide free access and usage.

7. Technical Support Services

- 7.1. Subject to clause 7.2, SS will provide technical support services to the Customer during the evaluation and implementation of the Service in accordance with the Service Level Agreement, as SS may amend from time to time by giving you at least twelve (12) months' written notice.
- 7.2. The Customer's Nominated Contact(s) should email SS-NSWPoint@finance.nsw.gov.au any incidents or Service Requests. The Customer acknowledges that technical support services are provided through PSMA and SS is not liable if those services are not provided or do not meet service levels.

8. Suspension

- 8.1. Of the Service: If SS becomes aware of any ground entitling PSMA to suspend SS' right to access the API Services under the PSMA Agreement (which suspension may be caused by the act or omission of any NSW Government Agency) and therefore SS' ability to provide the Service, SS may direct the Customer to suspend use of the applicable Service within three (3) Business Days. If the Customer fails to comply with that direction, SS may suspend the applicable Service immediately. Subject to PSMA's absolute discretion, the duration of any suspension by SS will be until the relevant NSW Government Agency has rectified the breach which caused the suspension.
- 8.2. Suspension to comply with laws: SS may at its sole discretion suspend the provision of the Service at any time if required to comply with any applicable law relevant to the Customer's use of the Service.
- 8.3. Reinstatement of such right to use the Service is at SS's absolute discretion but may also be further subject to PSMA's absolute discretion.

9. Intellectual Property Rights

- 9.1. Except as expressly set out, this Agreement does not grant either Party any rights, implied or otherwise, to the other's content or any of the other's Intellectual Property Rights including PSMA Data and the Service, as provided from time to time.
- 9.2. For the avoidance of doubt, the Customer retains ownership of Intellectual Property Rights in records in the Customer's datasets updated through the use of the Service by the Customer and its End Users.
- 9.3. Each Party must notify the other Party immediately in writing of any actual, suspected or anticipated infringement of the Intellectual Property Rights in the Service, or of a third party's allegation that SS' or the Customer's use of the Service infringes the third party's Intellectual Property Rights, that comes to its attention.

10. Warranties and Disclaimers

- 10.1. The Service is provided "as is" without warranty regarding its performance, accuracy, fitness for purpose or security or warranty that they will be fault or virus free.
- 10.2. The Customer acknowledges that as this Agreement is between NSW Government Agencies, it is not intended to be contractually or otherwise legally enforceable, there are no statutory or implied conditions and warranties, and SS is not liable to replace or re-supply the relevant Service.
- 10.3. Neither SS nor PSMA warrants that operation of the Service will be error-free or uninterrupted.

11. Indemnities

- 11.1. The Customer must indemnify SS in respect of costs, expenses, or damages incurred by SS, to the extent that they:
 - (a) are caused by any breach by the Customer of this Agreement; or
 - (b) relate to any liability of SS to PSMA arising from:
 - (i) any breach by the Customer in maintaining the confidentiality or security of its Service ID; or
 - (ii) any breach by SS of the PSMA Agreement (directly resulting from the Customer causing that breach), the negligence or intentional act or omission of the Customer, or the misuse by the Customer of PSMA Data or the API Services.

12. Miscellaneous

- 12.1. Force Majeure: Neither Party will be liable for any delay or failure in the performance of its obligations under this Agreement if such delay or failure is due to an event beyond its reasonable control (including e.g. act of government, natural disasters or Internet disturbance).
- 12.2. Notices: Any notice to be given under this Agreement is to be delivered to your Nominated Contacts' email address.

13. Definitions

Agreed Service Time for the Service is 24 hours per day/365 days per year less any Planned Downtime and any other time that the SLA states will not be included in the calculations of Availability.

Availability means the percentage of Agreed Service Time when the Service is fully available each month, calculated as follows:

$$= \frac{100 \times (\text{Agreed Service Time} - \text{Downtime})}{\text{Agreed Service Time}}$$

However, for the purpose of calculating Availability, time related to a test environment made accessible under the Agreement is excluded.

Business Day means any day that is not a Saturday, Sunday or public holiday in the State of New South Wales or any other notified closedown period as communicated by SS.

Business Hours means between 8.30am and 5.00pm AEST or AEDT on a Business Day.

Change means the addition, modification or removal of anything that could have an effect on the Service.

Degraded means the Service fails to provide a correct response to an address verification function call to an acknowledged address in less than 20 seconds.

Downtime means time when the Service is unavailable or Degraded but excludes such time which arises from your use of the Service, is beyond the reasonable control of SS or PSMA, or is within your reasonable control.

End Users means the individuals the Customer permits to use the Service in its customer services and business processes.

Financial year means each period of 12 months commencing on 1 July.

Intellectual Property Rights means all intellectual property rights including:

- (a) copyright, patent, trademark, design, semi-conductor or circuit layout rights, confidential information, or related rights, existing world-wide; and
- (b) any rights to apply for, register, use or otherwise exploit any of those rights.

Nominated Contacts are key personnel identified by the Customer to serve as primary liaisons between the Customer and SS for technical support as described in the Service Level Agreement. The Customer's Nominated Contacts will be responsible for (i) overseeing the Customer's support activities; and/or (ii) developing and deploying troubleshooting processes for the Customer.

NSW Government Agency means:

- (a) any Government department, State Authority, Government Business Enterprise or State-owned company that is subject to the Public Finance and Audit Act 1983 (NSW); or
- (b) any council subject to the Local Government Act 1993 (NSW).

Party means a party to this Agreement and **Parties** means both of them.

Party's Representative means, in relation to each Party, the person named as such in the acceptance of this Agreement or such other person as the Party may, from time to time, nominate in writing.

Planned Downtime means any period when the Service is not available to allow for maintenance, upgrades or testing. These will be scheduled and notified to the Customer via the Support Admin Portal.

Priority of an incident or Service Request means how quickly an incident or Service Request should be resolved and the greater the Severity, the more likely a higher Priority will be assigned.

Privacy Legislation means the Privacy Act 1988 (Cth) and the Privacy and Personal Information Protection Act 1998 (NSW) and includes all regulations, directions, guidelines and codes of practice made under those Acts.

PSMA Data means data provided by PSMA to SS as part of the API Services from time to time.

Service means the services described at <https://point.six.nsw.gov.au/index.html> and https://point.six.nsw.gov.au/NSWPoint_dictionary.html, as varied from time to time in accordance with this Agreement.

Service ID means a unique alphanumeric identifier for use by the Customer only which facilitates access to the Service.

Service Level Agreement or SLA means the provisions set out in the Schedule.

Service Request means a request for information or advice on use of the Service or for access to additional functions or other services delivered through API Services.

Severity of an incident or Service Request means the degree to which an unresolved incident or Service Request affects or potential affects the Customer or its End Users.

Term means the period described in clause 3.

14. Definitions

14.1. Except where a contrary intention appears:

- (a) A reference to any type of legislation is to that legislation as amended, consolidated, re-enacted or replaced, and includes any subordinate legislation issued under it.
- (b) A reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, will be taken to refer to that other person or body.
- (c) If a word or phrase is given a defined meaning, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning.
- (d) Words in the singular include the plural and vice versa.
- (e) References to 'person' or 'persons' will be taken to include any natural or legal person.
- (f) A reference to a group of persons is a reference to all of them collectively and to any two or more of them collectively and to each of them individually.
- (g) References to 'month' refer to a calendar month, and a 'year' means a period of twelve consecutive months.
- (h) Headings are for convenience only and do not affect the interpretation of this Agreement.

Schedule - NSW Point Service Level Agreement

This SLA forms part of this Agreement and sets out the support and related service levels provided and a benchmark for measuring the performance of the Service.

1. Support Team

- 1.1. The Support Team is located at Department of Customer Service - Spatial Services, 346 Panorama Avenue, Bathurst NSW 2795.
Email: SS-NSWPoint@finance.nsw.gov.au
Telephone: (02) 6332 8287
- 1.2. The Support Team will only operate on Business Days during Business Hours.

2. Severity Levels and Target Response Times

2.1. Support tickets entered by the Nominated Contacts from the Customer will generally be prioritised and handled according to the assigned Severity levels as set out below:

| Severity and Priority Levels | Description |
|------------------------------|---|
| Critical (Level 1) | Critical production issues affecting the Service for all End Users, including system availability and data integrity issues with no workaround available. |
| High (Level 2) | Major functionality is impacted or performance is significantly degraded. Issue is persistent and affects many End Users and / or major functionality (e.g. End Users are unable to access a function and/or significant amount of data is not available). Time-sensitive requests such as requests for feature activation. |
| Medium (Level 3) | No reasonable workaround is available. System performance issues or bug affecting some but not all End Users. Short-term workaround is available but not scalable (e.g. small number of End Users are not able to perform their business function and/or a small amount of data is not available). |
| Low (Level 4) | Inquiry regarding a routine technical issue such as information requested on application capabilities, navigation, installation or configuration. Resolution required as soon as reasonably practicable. |

2.2. The assignment of priorities is at the discretion of the Support Team utilising the information provided in the support ticket or Service Request.

2.3. The Support Team will use reasonable endeavours during Business Hours to respond to support tickets and Service Requests. Resolution times will vary according to the nature of the incident or Service Request and based on the assigned priority level. The Support Team's response will be within the following timeframes subject to the time the incident notification or Service Request is received:

| Priority | Target Response Time |
|----------|---|
| Level 1 | Within two (2) hours from receipt of the incident or Service Request. |
| Level 2 | Within eight (8) hours from receipt of the incident or Service Request. |
| Level 3 | Within two (2) Business Days from receipt of the incident or Service Request. |
| Level 4 | Within five (5) Business Days from receipt of the report of the incident or Service Request or as part of a future release where the response requires a Change to the Service. |

3. Availability

- 3.1. SS will use reasonable endeavours to ensure that the Availability of the Service is 98% of the Agreed Service Time.
- 3.2. Periodically, SS and PSMA perform activities which may require Planned Downtime. SS will use reasonable endeavours to ensure that Planned Downtime due to SS' activities is minimised and occurs at times that will cause the least disruption to the Customer.
- 3.3. SS will provide at least five Business Days' notice of any Planned Downtime. Typically, Planned Downtime will not exceed 2 hours in duration in any given event.
- 3.4. From time to time, events unrelated to Planned Downtime may occur that may result in unexpected Downtime. SS will use reasonable endeavours to ensure the Customer is given at least 24 hours' notice of any unplanned Downtime.

4. Change Management

- 4.1. SS will use reasonable endeavours to ensure that all Changes made to the Service are managed and scheduled so that the Customer can plan accordingly. New versions of the Service will be provided in beta for the Customer to test against the Service at one month prior to the release into production.
- 4.2. If any features of the Service are not compatible with a new release of the Service, they will be noted as deprecated (meaning their use should be avoided or phased out) in the release notes for the new release. SS will use reasonable endeavours to ensure that deprecated features of the Service will continue to be supported for a period of 12 months from the date of the release.

5. Reporting and Communication

- 5.1. SS proactively monitors the Customer's use of the Service and provides monthly reports on (i) transaction activity and usage; (ii) availability for the previous month and the financial year to date; and (iii) number of incident notifications and Service Requests received in the previous month and financial year to date including average response and resolution times.
- 5.2. Communications and notifications from SS to the Customer will be via email or telephone to the Nominated Contacts.