

Appendix C – Model licence agreement for the supply of data (Word version)

This agreement can be viewed at <http://www.anzlic.org.au/get/2375374755>

Important: The completed schedule and licence conditions set out below will constitute a legal agreement between the data supplier ('the supplier') and you ('the licensee') in relation to the data. If you agree with the conditions, please click on the appropriate button.

If you are entering into this agreement on behalf of a company or organisation, you warrant that you have the authority to do so.

This licence is supported by the data access and management protocol.

THE SCHEDULE

Date: the [day] day of [month], [year].

LICENSOR

The [licensor jurisdiction] is represented by the [licensor agency]. The contact details are:

Name/Title:

Address:

Telephone:

Facsimile:

E-mail address:

FOR EXAMPLE

WEST ACACIA CATCHMENTS COUNCIL

Name/Title: FRED JONES, NATURAL RESOUCE INFORMATION OFFICER

ETC

LICENSEE

Name/Title:

Company/Organisation:

Address:

Telephone:

Facsimile:

Email address:

FOR EXAMPLE

Name/Title: FRED JONES, NATURAL RESOUCE INFORMATION OFFICER

Company/Organisation: BLUE HILL LANDCARE CENTRE

ETC

THE DATA

[Description field from metadata]

FOR EXAMPLE:

REGIONAL BOUNDARIES, CATCHMENT BOUNDARIES, SALINITY EXTENT AND RISK, SOILS AND LAND DEGRADATION HAZARDS, NATIVE VEGETATION – TYPE AND EXTENT AND PROPERTY BOUNDARIES

Data are supplied via electronic transfer media. Accompanying metadata for the data is also supplied.

CONTRIBUTORS/JOINT OWNERS:

Item: [generated automatically from metadata]

Contributor:

Additional conditions:

FOR EXAMPLE

Item: ECOLOGICAL COMMUNITY BOUNDARIES

Contributor: DEPARTMENT OF ENVIRONMENT

Additional Conditions: NONE

Item: [generated automatically from metadata]

Contributor:

Additional conditions:

Item: [generated automatically from metadata]

Contributor:

Additional conditions:

[etc for each contributor]

USE

The data will be used by the licensee for: [inserted by applicant]

FOR EXAMPLE:

The data will be used by the licensee for: NRM ACTIVITIES IN THE BLUE HILL REGION

[ACCEPT]/[DO NOT ACCEPT]

LICENCE CONDITIONS**1 INTERPRETATION**

1.1 In these conditions, unless the contrary intention appears:

'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;

'Contributor' means:

I. an agency which is custodian of a particular item of data on behalf of that jurisdiction; or

II. a party identified as a contributor or joint owner of particular items of data which are the subject of this licence agreement;

'Data' means the data to which access is made available and includes any enhancements to the data;

'Enhancement', in relation to the data, includes any modification, adaptation or redevelopment of the data, any work derived from the data, machine readable representations of any of the foregoing and any associated material intended at the time of its creation to be used primarily in conjunction with the data;

'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;

'Licence' means the licence referred to in condition 3.

2 DURATION

2.1 The licence commences on the date of the agreement as set out in the schedule, and continues in force unless terminated in accordance with condition 10.1.

3 LICENCE CONDITIONS

3.1 The licensor grants to the licensee, a royalty-free, non-exclusive, non-transferable licence to use, reproduce, make enhancements to and print the data, and combine it with other data held by the licensee.

3.2 The licence is limited to personal use of the data or use within the licensee's organisation only.

3.3 The licensee shall not commercialise the data or any product or service derived from incorporating the data without the prior written consent of the relevant contributor(s).

3.4 The licensor warrants that the grant of the licence does not infringe the intellectual property rights of any person and that it is entitled to grant the licence in relation to the data of third party contributors.

3.5 Data items identified in the schedule as having been provided by individual contributors are subject to the additional conditions (if any) set out in the schedule. In the event of any conflict between the terms of the licence conditions and any additional condition set out in the schedule, the terms of the licence conditions shall take precedence.

4 INTELLECTUAL PROPERTY RIGHTS RESERVED

4.1 All rights not expressly granted to the licensee under condition 3 are reserved.

4.2 The licensee acknowledges that the data is a special, unique and valuable product in which the copyright and other applicable intellectual property rights vest in the contributors as listed in the schedule.

4.3 The contributors of items of data retain ownership of that data, whether in its original form or as modified by the licensee and of the intellectual property rights therein.

4.4 Intellectual property in any enhancement to the data vests, upon its creation, in the contributor named in the schedule in relation to the relevant item of data.

5 CUSTODY OF THE DATA

5.1 The licensee shall maintain the data in safe custody.

5.2 The licensee shall take all reasonable steps to ensure that any person given access to the data is aware of these conditions and uses the data only in accordance with this agreement.

6 PRECAUTIONS

6.1 The licensor and all contributors cannot guarantee that the data, including any third party data, is free from errors, and does not warrant the quality, performance or suitability of the data for any purpose.

6.2 The licensee assumes responsibility for selection of the data to achieve any intended results, and for its use.

6.3 The licensee assumes responsibility for the interpretation of any results obtained from use of the data, and must exercise all appropriate precautions before placing reliance on those results.

7 RELEASE AND INDEMNITY

7.1 The licensee:

Releases the licensor, its officers, employees and agents and all contributors in respect of all liability for loss, damage or injury which may be suffered by the licensee or arising from the licensee's use of the data; and

Indemnifies the licensor, its officers, employees and agents and all contributors 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.

7.2 The release and indemnity provisions will survive the expiration or termination of the licence.

8 RETENTION OF NOTICES

8.1 The licensee shall not remove, obscure or interfere with any copyright notice, trademark, warning or disclaimer incorporated in the data.

9 COMMERCIAL EXPLOITATION

9.1 The licensee shall not commercialise the data or any product or service derived from incorporating the data without the prior written consent of the relevant contributor(s).

9.2 A contributor may grant or refuse consent in their absolute discretion and subject to any condition whatsoever, including payment of royalties.

9.3 Any of the data or any product or service derived from incorporating the data which is commercialised in accordance with this clause, must be accompanied by or incorporate an appropriate acknowledgment of the contributor as the source of the data in the terms specified in the schedule.

10 TERMINATION

10.1 If the licensee breaches any of these conditions, the licensor may end the agreement immediately by notice in writing to the licensee.

10.2 The termination of the agreement under condition 10.1 shall be without prejudice to the rights of either party accrued under the agreement before termination.

10.3 The licensee shall cease using the data for any purpose from the date of termination of the agreement and shall return the data and any copies made of it to the licensor within 30 days of the date of termination.

11 ENTIRE AGREEMENT

11.1 The agreement supersedes all prior agreements and understandings between the parties relating to the data and constitutes the entire agreement between the parties.

12 VARIATION

12.1 No addition to or modification of any provision of the agreement shall be binding unless in writing signed by both parties.

13 ASSIGNMENT

13.1 The rights granted under the licence are restricted solely to the licensee and may not be assigned, transferred or sub-licensed without the prior written consent of the licensor.

13.2 The licensor may grant or refuse consent in its absolute discretion and subject to any condition whatsoever.

14 LAW

14.1 The agreement shall be governed by and construed in accordance with the laws of the licensor jurisdiction.

15 WAIVER

15.1 No forbearance, delay or indulgence by a party in enforcing the provisions of the agreement shall prejudice or restrict the rights of that party, nor shall waiver of those rights operate as a waiver of any subsequent breach.

16 SEVERANCE

16.1 Any reading down or severance of a particular provision does not affect the remaining provisions of the agreement.

17 APPLICATION

17.1 Where the licensee is an agency of the same jurisdiction as the licensor, such that it is not permitted to enter into a binding legal agreement except as that jurisdiction, then the conditions shall be read as merely giving rise to an arrangement between the licensor and the licensee.