

DEPARTMENT OF SUSTAINABILITY AND ENVIRONMENT

No Signature – With Consideration

DATA ACCESS LICENCE AGREEMENT

WARNING: PERMISSION TO USE THE LICENSED MATERIAL THAT ACCOMPANIES THIS AGREEMENT IS CONDITIONAL UPON YOU, THE CUSTOMER (LICENSEE) ACCEPTING THE TERMS SET OUT BELOW.

1. Definitions

In this Agreement the following terms shall have the meanings set out below, unless the context requires otherwise.

“**Agreement**” means this Licence Agreement and includes the Schedule and any annexures or documents incorporated by reference;

“**Code of Practice**” means a code of practice as defined in, and approved under, the *Information Privacy Act 2000* (Vic);

“**Commencement Date**” is the date specified in the Schedule;

“**Commercialise**” or a derivation of that word in respect of the Licensed Material or a product or service derived from the Licensed Material, includes distributing, giving away, selling, letting for hire, or by way of trade, offering or exposing for sale or hire any article embodying the Licensed Material or any product or service derived from or incorporating the Licensed Material;

“**Enhancement**” or a derivation of that word, in relation to the Licensed Material, includes any modification, adaptation or redevelopment of the Licensed Material, any work derived from the Licensed Material, 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 Licensed Material;

“**Fee**” is the fee or fees specified in the Schedule payable by the Licensee to the Licensor (or the Licensor's Agent) for the use of the Licensed Material;

“**Further Term**” means such further term of this Licence as granted from time to time (for whatever period) by the Licensor on payment of the Renewal Fee;

“**GST**” means any tax imposed under the GST Law and includes GST within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth) as amended from time to time;

“**Information Privacy Principles**” means the Information Privacy Principles set out in the *Information Privacy Act 2000* (Vic);

“**Licence**” is the Licence granted pursuant to this Agreement by the Licensor to the Licensee for the use of the Licensed Material;

“**Licensed Material**” means the material so described in the Schedule the subject of this Agreement and any Enhancement thereto;

“**Licensee**” is the party specified as such in the Schedule;

“**Licensor**” means the State of Victoria;

“**Permitted Number of Computers**” means the number of computers, as set out in the Schedule, that are permitted to store or have access to the Licensed Material;

“**Renewal Fee**” means the fee payable to the Licensor for the grant of a Further Term of the Licence, which fee may be reviewed by the Licensor at any time and varied with respect to each such Further Term as the Licensor considers appropriate;

“**Third Party Licensed Material**” means material (if any) so described in the Schedule which is owned by a third party and is incorporated in the Licensed Material or accompanies the Licensed Material; and

“**Term**” means the term of this Licence as specified in the Schedule.

2. Scope of Agreement

- 2.1 Subject to the terms and conditions of this Agreement, the Licensor grants to the Licensee a non-transferable and non-exclusive licence to use the Licensed Material for the purposes set out in the Schedule.

3. Acceptance

- 3.1 The Licensee accepts or is deemed to have accepted the terms of the Licence upon:
- (a) when delivery of the Licensed Material is by CD or other physical form of delivery and a Licence has not previously been signed in respect of that Licensed Material -; upon opening the sealed package containing the Licensed Material;
 - (b) when delivery of the Licensed Material is by email -; upon dispatching an email addressed to the Licensor agreeing to the terms of the Licence;
 - (c) when delivery of the Licensed Material is by the Internet -; upon acknowledgment of your acceptance of the terms of the licence by pressing the agreement button on the screen;
 - (d) if delivery of the Licensed Material is by a method other than those referred to in (a), (b) or (c) of this sub-clause 3; upon signing this Licence.

4. Duration of Licence

- 4.1 Subject to the Licensor granting the Licensee a Further Term, this Agreement commences on the Commencement Date and will continue for the Term.
- 4.2 The Licensor may offer the Licensee a Further Term by notifying the Licensee in writing of such offer and of the Renewal Fee payable with respect to such Further Term and the date by which the Renewal Fee must be paid. If, prior to or upon expiration of the Term, the Licensor offers in writing to renew the Licence for a Further Term under this sub-clause 4.2, the Licence shall, subject to the payment of the Renewal Fee by the date set for that Further Term, continue for the period of such Further Term. The Licence renewed under this clause shall be on the same terms and conditions as set out in this Agreement, subject to any variations agreed to in writing by the Licensor and save that the Renewal Fee for any Further Term of the Licence may be varied by the Licensor.
- 4.3 If, upon expiration of the Term (or Further Term) of the Licence, the Licensee does not renew the Licence for a Further Term, then the Licensee or its representative shall destroy any remaining copies of the Licensed Material and any information or other documentation associated with it or otherwise return or dispose of such Licensed Material and information in the manner directed by the Licensor.

5. Permitted Number of Computers and Audit

- 5.1 This Licence entitles the Licensee to load one copy of the Licensed Material onto a hard disk or other storage device of up to the Permitted Number of Computers set out in the Schedule.
- 5.2 The Licensee may load one copy of the Licensed Material on a single file server for the purposes of:
- (a) downloading the Licensed Material onto a hard disk or other storage device of up to the Permitted Number of Computers that are on the same network as the file server; and/or
 - (b) providing access to the Licensed Material to network computers or terminals (being computers with no hard disk or other storage device) up to the Permitted Number of Computers that are on the same network as the file server.
- No other network use is permitted.
- 5.3 Any calculation of the Permitted Number of Computers shall include all computers of the Licensee that store or have access to the Licensed Material, whether pursuant to sub-clause 5.1, 5.2 (a) or 5.2 (b).
- 5.4 The Licensor shall, upon reasonable notice being given by the Licensor, be permitted to attend at the Licensee's premises at any time during normal business hours and conduct such tests on the Licensee's computer equipment as is necessary to verify the number of computers on which the Licensed Material is, or has been, displayed or used. The Licensor shall keep confidential any information of the Licensee which comes to the Licensor's attention whilst carrying out such tests other than information concerning the use and display of the Licensed Material.

6. Licence Conditions

- 6.1 The Licensor warrants it has the right and authority to grant the Licence to the Licensee.
- 6.2 Except as provided for in this Agreement and subject to sub-clause 6.3 the Licensee shall not copy or reproduce the Licensed Material without the Licensor's prior written consent.
- 6.3 The Licensee shall keep the Licensed Material confidential and shall not Commercialise or otherwise disclose the Licensed Material or any product or service derived from the Licensed Material to any third party unless specifically provided by this Agreement. The Licensee may make Enhancements to the Licensed Material for the purposes set out in the Schedule but may not Commercialise or otherwise disclose the Licensed Material so Enhanced or the Enhancements to any third party other than in accordance with sub-clause 6.6.
- 6.4 The Licensee may make copies of the Licensed Material for the purpose of back-up and security only. The Licensee shall at all times acknowledge such copies as the property of the Licensor. The terms of this Agreement apply to the said copies.
- 6.5 The Licensee may only use the Licensed Material for the purposes set out in the Schedule.
- 6.6 The Licensee may permit its consultants, contractors or sub-contractors (in this Agreement referred to as "Consultants") to use the Licensed Material for the purposes described in sub-clause 6.5, provided that the Licensee takes all necessary steps and imposes the necessary conditions to ensure that the Consultants using the Licensed Material keep the Licensed Material (including any Enhanced Licensed Material) confidential and do not Commercialise or disclose it to any third person or use it other than in accordance with the terms of this Agreement. Consultants must not retain copies of the Licensed Material after ceasing to be employed or engaged by the Licensee. The Licensee shall take the necessary steps to impose and enforce this condition.
- 6.7 If the Licensee discovers any error or omission in the Licensed Material it should notify the Licensor accordingly. The Licensee agrees that the Licensor is entitled to make use of such information and include it in the Licensed Material supplied to third parties where the supply of the Licensed Material is specifically allowed by the terms of this Agreement. If a taxable supply within the meaning of the GST Act is made pursuant to this sub-clause 6.7, GST must be included in the price of the supply.
- 6.8 The Licensee acknowledges that there is no transfer of title or ownership of the Licensed Material, and that the copyright and intellectual property in the Licensed Material other than the Third Party Licensed Material shall remain the property of the Licensor and the Licensee shall not deal with the Licensed Material inconsistently therewith and shall not intentionally destroy the Licensed Material except as provided by clauses 4, 13 and 14.
- 6.9 The Licensee shall be supplied with the Licensed Material in the format and in the media set out in the Schedule.
- 6.10 Where the Licensee uses the Licensed Material as permitted under this agreement to produce information products of whatever nature (including analytical, digital or analogue products), the Licensee shall ensure that such products are endorsed with a notice indicating the origin and currency of the Licensed Material, the State of Victoria's ownership and copyright of the Licensed Material and a disclaimer in the terms set out below:

The State of Victoria does not warrant the accuracy or completeness of information in this publication and any person using or relying upon such information does so on the basis that the State of Victoria shall bear no responsibility or liability whatsoever for any errors, faults, defects or omissions in the information.
- 6.11 The Licensee shall notify the Licensor of any change to the Licensee's address immediately on the occurrence thereof.

7. Interests of Third Parties

- 7.1 The Licensee acknowledges that copyright in the Third Party Licensed Material is owned by a third party. The Licensor warrants that it is permitted to supply the Third Party Licensed Material to the Licensee but the Licensee acknowledges that it may be required to enter a separate agreement with the relevant third party.
- 7.2 This Agreement shall apply to any Third Party Licensed Material that is not the subject of a separate agreement with a third party.
- 7.3 The Licensee agrees to indemnify the Licensor against any liability, loss, claim or demand arising out of action or omission taken by the Licensee with respect to the Third Party Licensed Material in breach of this Agreement.

8. Security

- 8.1 The Licensee shall be solely responsible for the use, supervision, management and control of the Licensed Material provided to the Licensee pursuant to this Agreement.
- 8.2 The Licensee shall make all reasonable efforts to ensure that the Licensed Material is protected at all times from access, use or misuse, damage or destruction by any person not authorised by the Licensor for that purpose.

9. Confidentiality and Privacy

- 9.1 Except for disclosures necessary to meet statutory or regulatory requirements, the Licensee shall treat as confidential the Licensed Material (other than advertising or publicity material) relating in any way to the Licensed Material.
- 9.2 The Licensee shall not without the Licensor's prior consent in writing, copy or disclose or cause to be copied or disclosed the Licensed Material to a third party unless expressly authorised by this Agreement.
- 9.3 The Licensee may only make use of the Licensed Material to the extent necessary to enable the Licensed Material to be used as provided for under this Agreement.
- 9.4 The Licensee may only disclose the Licensed Material to those of its employees by whom it is required to enable the Licensed Material to be used in a manner reasonably contemplated by the Licensor. The Licensee shall ensure that the Licensed Material so disclosed is kept confidential by the employees to whom it is disclosed.
- 9.5 The Licensee shall not use the Licensed Material to produce material or products for the purposes of Commercialisation except as otherwise expressly authorised by this Agreement.
- 9.6 The Licensee's obligations under this clause 9 shall survive the termination of this Agreement.
- 9.7 For the purposes of section 17 of the *Information Privacy Act 2000* (Vic), the Licensee is bound by the Information Privacy Principles and any applicable Code of Practice for the purposes of information provided to it by the Licensor pursuant to this Licence in the same way and to the same extent as the Licensor would have been bound in respect of that Act or practice had it been directly done or engaged in by the Licensor.

10. Warranty and Indemnity

- 10.1 The Licensee acknowledges that it has exercised its independent judgement in acquiring the Licensed Material and has not relied on any representation made by the Licensor which has not been stated expressly in this Agreement or upon any descriptions or illustrations or specifications contained in any document including catalogues or publicity material produced by the Licensor.
- 10.2 The Licensee acknowledges that the Licensed Material cannot be guaranteed error free and further acknowledges that the existence of any errors shall not constitute a breach of this Licence.
- 10.3 The Licensor will replace any defective media at no charge subject to notification of the said defect by the Licensee.
- 10.4 In the event any statute implies terms into this Agreement which cannot be lawfully excluded such terms will apply to this Agreement save that the liability of the Licensor for breach of any such implied term will be limited to the replacement of goods to which the breach relates or the supply of equivalent goods (at the discretion of the Licensor).
- 10.5 To the extent permitted by law the Licensor will not be liable for any indirect or consequential damages arising out of a breach of this Licence or arising out of the supply of defective Licensed Material.
- 10.6 The Licensee agrees to indemnify the Licensor and its officers and employees and agents, in respect of all claims for loss, damage, or injury suffered by any person resulting from use by the Licensee or by a third party of the Licensed Material or any part thereof or of materials produced or derived from the Licensed Material.
- 10.7 The Licensed Material may include date related information in a form that could be incorrectly interpreted during processing. The Licensor gives no warranty that such errors will not occur. The Licensee shall establish the precise nature of any date related information included in the Licensed Material when determining how such data may reasonably be used.

11. Copyright

- 11.1 The Licensee acknowledges that the Licensed Material and associated documentation are subject to copyright. The Licensee shall not during or any time after the expiry or termination of this Licence permit any act which infringes that copyright and without limiting the generality of the foregoing the Licensee specifically acknowledges that it may not copy the Licensed Material except as otherwise expressly authorised by the Agreement.
- 12. Fee and Renewal Fee**
- 12.1 The Licensee shall pay the Fee and where applicable the Renewal Fee. The Fee is payable in advance unless otherwise indicated by the Licensor. The Renewal Fee shall apply to such Further Term as notified to the Licensee by the Licensor. The Licence is contingent upon and shall not come into operation until payment of the Fee and subsequently any Renewal Fee.
- 12.2 The Fee and any Renewal Fee payable by the Licensee shall be inclusive of GST but is exclusive of all other taxes, duties and charges imposed or levied in Australia or overseas imposed on or in connection with the Licence including the supply and installation of the Licensed Material.
- 12.3 Without limiting the foregoing, the Licensee shall be liable for all existing and new taxes, duties or charges imposed on or in connection with the Licence or any supplies made under or in connection with this Agreement and the Renewal Fee, shall be increased to reflect any such taxes duties or charges imposed.
- 12.4 The Licensor may at any time, and from time to time, during the Term or any Further Term vary the Renewal Fee as appropriate under this clause 12 by giving the Licensee written notice of such variation. The Renewal Fee increased under this sub-clause 12.4 shall become the Renewal Fee under this Agreement from the date stipulated in such notice.
- 13. Termination**
- 13.1 This Licence may be terminated in the following circumstances:
- 13.1.1 If either party is in breach of any term of this Agreement; under this Agreement the other party may, by written notice to the party in breach, specify the breach and request that the breach be remedied within 14 days (or any longer period stated in the notice) after the service of the notice. If the party in breach does not remedy the breach within the period stated in the notice given under this clause, the other party may terminate this Agreement immediately by written notice to the party in breach.
- 13.1.2 If the Licensor terminates this Agreement under sub-clause 13.1.1 the Licensee may be entitled to a pro-rata refund of the Fee based on the number of unexpired days of the Agreement up to a maximum of fifty percent of the Fee.
- 13.1.3 If the Licensee becomes, threatens or resolves to become the subject of insolvency proceedings;
- 13.1.4 If the Licensee, being a firm or partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- 13.1.5 If the Licensee intentionally destroys the Licensed Material for any reason; or
- 13.1.6 If either party advises the other in writing of their intention to terminate this Licence by giving the other party 30 days written notice.
- 13.2 Upon termination the Licensee or its representative shall destroy any remaining copies of the Licensed Material and any documentation associated with it or otherwise return or dispose of such material in the manner directed by the Licensor.
- 13.3 Termination pursuant to this clause shall not affect any rights or remedies which the Licensor or Licensee may have otherwise under this Licence or at law.
- 14. Updates**
- 14.1 Unless specified in the Schedule the Licensor is under no obligation under this Agreement to provide updates of the Licensed Material.
- 14.2 Where an update is provided pursuant to sub-clause 1:
- (a) this Agreement will continue to apply in all respects to the update which shall be deemed to be the Licensed Material for the purpose of this Agreement; and
- (b) where requested by the Licensor the Licensee shall return to the Licensor all copies of the original Licensed Material or otherwise deal with all copies of the original Licensed Material in accordance with the Licensor's directions.
- 14.3 Without limiting the Licensee's obligations under this clause, and notwithstanding any other provision of this Agreement, the Licensor shall be under no liability to the Licensee in the event of loss or damage suffered by the Licensee as a result of the Licensor's failure to comply with this clause.
- 14.4 In the event that an update of the Licensed Material is provided the Licensor shall charge for such update at its then current standard fee for such service.
- 15. Merging of Material**
- 15.1 The Licensee may merge all or any part of the Licensed Material with any other material.
- 15.2 If the Licensed Material is merged with other material as provided for in sub-clause 1:
- (a) the costs associated with merging the material or the costs arising out of the investigation of the effects of merging the material will be borne solely by the Licensee;
- (b) the Licensee will fully indemnify the Licensor against all liability which may be incurred by the Licensor if such merging of material infringes any Intellectual Property Rights of a third person or otherwise cause the Licensor to suffer loss, damage or expense; and
- (c) the Licensee shall not Commercialise or otherwise disclose to any third party the material so merged to any third party, unless expressly permitted in the Schedule, other than the Consultants described in sub-clause 6.6.
- 15.3 Upon being merged with other material the Licensed Material remains the property of the Licensor in all respects.
- 15.4 This Agreement shall apply to that part of the Licensed Material that is merged with other material.
- 15.5 The Licensee shall execute such documents and perform such other acts as are necessary in order to give effect to sub-clause 15.3.
- 16. Assignment**
- 16.1 The benefit of this Agreement shall not be dealt with in any way by the Licensee (whether by assignment, sub-licensing or otherwise) without the Licensor's written consent which will not be unreasonably withheld.
- 16.2 The Licensor may assign its rights and obligations under this agreement to such person or entity as takes over the assets or assumes the functions of the Licensor from time to time.
- 17. Waiver**
- 17.1 Failure or neglect by either party to enforce at any time any of the provisions of this Agreement shall not be construed or deemed to be a waiver of that party's rights under this Licence.
- 18. Governing Law**
- 18.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Victoria.
- 19. Application**
- 19.1 Where the Licensee is an agency of the State of Victoria, such that it is not permitted to enter into a binding legal agreement except as the State of Victoria, then the conditions shall be read as merely giving rise to an arrangement between the Department of Sustainability and Environment.

SCHEDULE

Reference No.				
Licensee -	ABN		
Licensee Contact				
Address -				
Licensed Material -	Product:			
	Portion:			
	Area:			
	Computers: ¹			
	Format:			
	Media:			
Third Party Licensed Material -				
Purpose for which the Licensed Material is to be used -				
Permitted Information Products -				
Site where the Licensed Material is to be used -				
Commencement Date -				
Renewal Date -				
Duration of Licence ² -				
Fee (GST-inclusive) -		\$		
Renewal Fee (subject to variation under cl.12) -		\$		
Frequency of updates (if any)				

Address for Notices

Licensee -	As Above
Licensor -	The State of Victoria through the Department of Sustainability and Environment
Supplier -	As Above
Data Service Provider -	

¹ Permitted number of computers

² Subject to grant of a Further Term