



Business Licence

between

_____ (The Licensor)

and

_____ (The Licensee)

Agreement No: _____

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This document has been developed from a standard QSIIS Business Framework template provided by the QSIIS Information Office. For further information regarding the availability and use of QSIIS templates contact:

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Intended Use

This Licence Template is intended for use by an organisation to appoint Licensees in the roles of Open Value Adding Reseller, Value Adding Reseller, or Reseller. The Licensee's permitted use is shown at the top of the signature page (Pg 13). The organizations that typically use this document include Custodians and Open Value Adding Resellers.

Crown Law Statement

The Crown Law Office, in the Queensland Department of Justice and Attorney General, has directly participated with QSIIS in settling the terms and conditions contained in this QSIIS licence template agreement, which is one of a series of QSIIS template agreements.

Crown Law considers this template licence agreement, in its present form, is appropriate for use by Queensland Government agencies, including Queensland Government departments, in the circumstances in which the document is stated to be intended to be used. Nevertheless Public Sector Agencies should seek legal advice as necessary.

In all the circumstances this agreement strikes a realistic balance between the rights and obligations of the parties especially having regard to the various sources from which the relevant data is provided and the various processes needed to produce or present the data.

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Crown Law Office contact for public sector agencies: Information Technology, Intellectual Property and Contracting Team (ITIP & C): Telephone (07) 3247 5733 and (07) 3239 6338; Facsimile (07) 3239 6386.

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THIS AGREEMENT dated this _____ day of _____ 2001

BETWEEN: Name: _____ of
 Address: _____
 _____ (“the
 Licensor”)

ABN: _____ (if applicable)

AND: Name: _____ of
 Address: _____
 _____ (“the
 Licensee”)

ABN: _____ (if applicable)

Recitals

- A The Licensor has the rights, or has been given the rights, to issue this licence for the Licensed Data.**
- B The Licensee desires to obtain a licence from the Licensor to use the Licensed Data.**
- C The Licensor is prepared to grant a non-exclusive, non-transferable licence to the Licensee, to use the Licensed Data for the purposes specified in this Agreement but subject to the terms and conditions set out below.**

IT IS AGREED:

1 INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears or the context requires:

- (1) **Agreement** includes all Schedules.
- (2) **Commencement Date** means the date of this Agreement shown at the top of this page.
- (3) **Consultant** means any consultant, contractor or business partner of the Licensee engaged for a specific project of the Licensee.
- (4) **End User** means any corporation, organisation or person who receives or accesses for payment or otherwise Licensed Data or Licensed Data Products for its own use and not for resale
- (5) **Hardcopy Product** means any paper based Licensed Data Product.
- (6) **Intellectual Property Rights** means all copyright, patent application rights, patent rights, design rights, database rights, trade mark rights (whether registered or unregistered), trade secrets and confidential information, all know-how, and all other rights of intellectual property.
- (7) **Licence** means the non-exclusive, non-transferable licence granted by the Licensor to the Licensee pursuant to this Agreement.

- (8) **Licence Template** means the pro forma template for this Agreement.
- (9) **Licensed Data** means the data that is identified in Schedule A at the date of delivery, and includes any revision, updates or reissue provided by the Licensor during the term of this Agreement. It includes data that has been reformatted or converted onto different media or translated into another format.
- (10) **Licensed Data Product** means any value added product derived from or based on the Licensed Data or any other Licensed Data Product.
- (11) **Licensee's Agent** means any corporation, organisation or person who acts on behalf of the Licensee to distribute the Licensed Data or Licensed Data Products.
- (12) **On-line Access** means access using a public network or Internet-based application to access the Licensed Data or Licensed Data Products on a computer system.
- (13) **Open Value Adding Reseller ("OVAR")** means any corporation, organisation or person who is supplied Licensed Data or Licensed Data Products for the purposes of acting as a Reseller or Value Adding Reseller and in addition is authorised to issue sub-licences for the Licensed Data or Licensed Data Products to others to act as Resellers or Value Adding Resellers.
- (14) **Reseller** means any corporation, organisation, or person that is licensed and supplied with Licensed Data for the purposes of selling the Licensed Data to End Users under licence. A Reseller may not modify or add value to the Licensed Data.
- (15) **Sub-licence** means a sub-licence issued by an Open Value Adding Reseller using this Licence Template.
- (16) **Value Add/Adding** means any augmenting, repackaging or incorporating of the Licensee's data with the Licensed Data or any augmenting, repackaging or incorporating of the Value Adding Reseller's data with the Licensed Data Product. Reformatting or conversion of the Licensed Data onto different media or the translation into a different format is not Value Adding.
- (17) **Value Adding Reseller ("VAR")** means any corporation, organisation or person who is supplied Licensed Data or Licensed Data Products for the purposes of:
- (a) further value-adding to the Licensed Data Product; or,
 - (b) incorporating the Licensed Data Product into a significantly different product; or,
 - (c) incorporating the Licensed Data with an application program including run-time "view only" software.
- 1.2 A reference to the singular shall include the plural and vice versa, each reference to the male gender refers to all other genders, and each reference to a person shall include reference to a body corporate or where applicable an unincorporated association.
- 1.3 Any monetary terms in this Agreement shall be in Australian currency.
- 1.4 A reference to a clause, schedule or attachment is a reference to a clause or schedule of or an attachment to this Agreement.
- 1.5 A reference in this Agreement to a Schedule shall be read as including a reference to that Schedule as amended or substituted from time to time by written agreement between the parties.

- 1.6 Headings used in this Agreement are for convenience and ease of reference only, are not part of this agreement and shall not be relevant to or affect the meaning or interpretation of this Agreement or any part of this Agreement.
- 1.7 Reference to statutes, regulations, ordinances or by-laws shall be deemed to extend to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing the same.

2 PREVIOUS LICENCE

- 2.1 This Agreement supersedes and terminates all previous agreements between the parties concerning the use by the Licensee of the Licensed Data.

3 LICENCE

- 3.1 Subject to the Licensee paying the fees specified in Schedule B and the execution of this Agreement, the Licensor grants the Licence to the Licensee, to use the Licensed Data for the purposes set out in this Agreement.
- 3.2 Unless this Agreement is terminated under clause 19, the Licensee is permitted to retain the Licensed Data in its possession at the expiration of the term of this Agreement.

4 TERM OF LICENCE

- 4.1 The Licence granted under this Agreement shall take effect on and from the Commencement Date and shall continue for three (3) years, subject to any earlier termination.

5 CONTINUATION OF LICENCE

- 5.1 The Licensee (except for those Licensees of one-off supply) may apply to the Licensor to continue the Licence at the completion of the term in clause 4 above, for a further term of three (3) years.
- 5.2 An application to continue the Licence is to be made not earlier than six (6) months and not later than three (3) months prior to the end of the term set out in clause 5.
- 5.3 The Licensor may approve an application referred to in clause 5.2 if the Licensee:
- (1) has made full and prompt payments of all fees due;
 - (2) has not been in breach of the Agreement or if a breach has occurred has remedied the breach in accordance with the Agreement;
 - (3) has applied to renew in accordance with clause 5.2; and
 - (4) agrees to be bound by any amendments or additions to the terms and conditions of this Agreement as the Licensor may request at the time of the application.
- 5.4 Following approval of the application for continuation of the Licence the new Agreement shall:
- (1) commence immediately upon the expiration of this Agreement; and,
 - (2) be subject to the fees that will be determined by the Licensor and applied at that time.

6 FEES

- 6.1 The Licensee shall pay to the Licensor the relevant fees specified in Schedule B.

- 6.2 In addition to the fees payable pursuant to clause 6.1, where the Licensee issues a sub-licence to a Value Adding Reseller or a Reseller the Licensee shall pay to the Licensor in advance the VAR Access Fee or Reseller Access Fee specified in the Table in Section 1.1 of Schedule C.

7 STATUS OF LICENSEE

- 7.1 The Licensee shall not:

- (1) represent itself or allow itself to be represented as a partner, employee or agent of the Licensor; nor,
- (2) by virtue of this Agreement be or become a partner, employee or agent of the Licensor.

- 7.2 The Licensee acknowledges that it does not have the power or authority, directly or indirectly or through its servants or agents, to bind the Licensor to any agreement with a customer or other third party or otherwise to contract, negotiate or enter into a binding relationship for or on behalf of the Licensor, or make any representation on behalf of the Licensor.

8 DELIVERY

- 8.1 The Licensed Data will be made available to the Licensee as soon as is practical after receipt of payment of the necessary fees and execution of this Agreement.

9 OWNERSHIP

- 9.1 This Agreement does not confer on the Licensee any rights of ownership in the Licensed Data and all Intellectual Property Rights including copyright in the Licensed Data (and all copies of the Licensed Data) are unaffected by this Agreement regardless of whether the Licensed Data has been reformatted or converted onto different media.

10 PERMITTED USE

- 10.1 Copying of Licensed Data

- (1) The Licensee shall be permitted to make only copies of the Licensed Data for the purpose of this Agreement and for purposes of data security and recovery.

- 10.2 Licensed Data and Licensed Data Products

- (1) The Licensee shall be permitted to on-sell under licence the Licensed Data and/or Licensed Data Products, provided that
 - (a) nothing will derogate from the ownership of the Licensed Data.
- (2) The Licensee shall ensure that any Licensed Data or Licensed Data Product shall bear a label stating its currency at the time of its manufacture or creation as set out in Item 1.1(b) of Schedule D.
- (3) The Licensee may supply Licensed Data or Licensed Data Products to the Licensee's Agents, Consultants, Value Adding Resellers and End Users under the terms of this Agreement and shall take all reasonable steps to determine that such Licensed Data or Licensed Data Products are distributed for bona fide and lawful business interests only.

- 10.3 Privacy

- (1) The Licensee shall not distribute Licensed Data or Licensed Data Products with the intention of encroaching upon the privacy of an individual, company or other organization.

10.4 Restrictions on Resale by End Users

- (1) End Users may not reproduce, repackage or on-supply Licensed Data or Licensed Data Products in any manner whatsoever other than Hardcopy Products distributed at no charge and not in association with any other paid service or product.

10.5 Use of Agents

- (1) The Licensee may appoint a Licensee's Agent to distribute Licensed Data or Licensed Data Products on behalf of the Licensee provided that the Licensee's Agent has entered into a written licence agreement with the Licensee that incorporates the Standard Terms set out in Schedule E. In the event of the termination of the abovementioned written licence agreement with the Licensee's Agent, the Licensee shall notify the Licensor of such termination in writing and the Licensee shall immediately cease supply of the Licensed Data to the Licensee's Agent.
- (2) The Licensee's Agent acts on behalf of the Licensee to resell Licensed Data or Licensed Data Products as supplied by the Licensee. The Licensee's Agent may not value-add, enhance or alter Licensed Data or Licensed Data Products.

10.6 Use of Consultants

- (1) The Licensee shall be permitted to provide Licensed Data or Licensed Data Products to Consultants engaged by the Licensee for a specific project requiring use of the Licensed Data or Licensed Data Products where the Consultants receive no benefit from use of the Licensed Data or Licensed Data Products save the fee paid by the Licensee provided that the Consultant has entered into a written licence agreement with the Licensee which incorporates the Standard Terms set out in Schedule F.

10.7 Requirements for End Users

- (1) The Licensee shall not distribute or allow resale of the Licensed Data or Licensed Data Products to End Users unless that End User has either entered into:
 - (a) a written licence agreement with the Licensee which incorporates the conditions set out in Schedule G; or
 - (b) a licence agreement by consent via an open network/Internet environment which incorporates the conditions set out in Schedule H.
- (2) The Licence Agreement referred to at Schedule H is intended for the once off or casual End Users. The Licensee shall ensure that prior to accessing the Licensed Data or Licensed Data Products this End User accepts these terms and conditions by having to respond to an "I Agree" button on the screen or an equivalent mechanism for consent.

10.8 Copyright Notice and Disclaimer

- (1) The Licensee agrees that all copies of the Licensed Data made pursuant to clause 10 shall display the Licensor's copyright notice in the form specified in paragraph 1.1(a) of Schedule D, or a form as directed in writing by the Licensor.
- (2) The Licensee must ensure that all Licensed Data Products produced by the Licensee or the Value Adding Reseller shall display a copyright and currency of data notice as specified in paragraph 1.1(b) of Schedule D.

- (3) The Licensee must ensure that all Licensed Data and Licensed Data Products distributed by the Licensee and all Licensed Data Products distributed by the Value Adding Reseller shall display a disclaimer as specified in paragraph 2 of Schedule D.

10.9 Enforcement

- (1) The Licensee shall take all reasonable steps to enforce the terms and conditions specified in this clause 10.

10.10 Inconsistency

- (1) Any agreements entered into between the Licensee and the Licensee’s Agents, Consultants, Value Adding Reseller and End Users shall not be inconsistent with the terms and conditions of this Agreement.

WHERE THE LICENSEE IS A VALUE ADDING RESELLER, THEN IN ADDITION TO THE RIGHTS CONFERRED UNDER CLAUSE 10, THE LICENSEE SHALL HAVE THE ADDITIONAL RIGHTS SET OUT IN CLAUSE 11. IF THE LICENSEE IS A RESELLER AND NOT A VAR OR OVAR THEN THIS CLAUSE 11 MUST BE DELETED AND THE DELETION INITIALED BY BOTH PARTIES.

11 PERMITTED USE - ADDITIONAL RIGHTS for VALUE ADDING RESELLER

11.1 Licensed Data and Licensed Data Products

- (1) The Licensee shall be permitted to combine the Licensed Data with other data owned by or licensed to the Licensee to create Licensed Data Products and to resell the Licensed Data Products under licence, provided that
 - (a) nothing will derogate from the ownership of the Licensed Data.

WHERE THE LICENSEE IS AN OPEN VALUE ADDING RESELLER, THEN IN ADDITION TO THE RIGHTS CONFERRED UNDER CLAUSES 10 AND 11, THE LICENSEE SHALL HAVE THE ADDITIONAL RIGHTS AND REQUIREMENTS SET OUT IN CLAUSE 12. IF THE LICENSEE IS A RESELLER OR VAR AND NOT AN OVAR THEN THIS CLAUSE 12 MUST BE DELETED AND THE DELETION INITIALED BY BOTH PARTIES.

12 PERMITTED USE - ADDITIONAL RIGHTS AND REQUIREMENTS for OPEN VALUE ADDING RESELLER

12.1 Sublicensing to Value Adding Resellers

- (1) The Licensee may appoint a Value Adding Reseller and supply to it Licensed Data and Licensed Data Products for the purposes of
 - (a) further value-adding to the Licensed Data Product;
 - (b) incorporating the Licensed Data Product into a significantly different product; or
 - (c) incorporating the Licensed Data with an application program including run-time “view only” software.
- (2) The Licensee shall not make the Licensed Data or Licensed Data Products available to the Value Adding Reseller for value-adding and resale, unless:

- (a) the Value Adding Reseller has entered into a written licence agreement with the Licensee on such terms and conditions as the Licensee deems appropriate but which incorporates conditions that:
 - (i) restrict the resale of Licensed Data Products between Value Adding Resellers to Value Adding Resellers which have a current licence with the Licensee for the same Licensed Data; and
 - (ii) ensure that any Licensed Data Product of the Value Adding Reseller has a label stating the currency of the Licensed Data at the time of manufacture or creation of such a product; and
 - (iii) pays the Value Adding Reseller Access Fees specified in Schedule C.

12.2 Requirements for Open Value Adding Resellers

- (1) Where the Licensor is an Open Value Adding Reseller the Licensor must use the Licence Template to appoint Licensees in the roles of Reseller or Value Adding Reseller. The Licence Template cannot be modified, amended or altered in any way.
- (2) An Open Value Adding Reseller cannot appoint another corporation, organization or person as an Open Value Adding Reseller under any circumstances.

13 CONFIDENTIALITY

13.1 The Licensee agrees that the Licensed Data is the valuable commercial information of the Licensor.

13.2 The Licensee agrees to provide access to the Licensed Data to only such of its employees, servants, Consultants and Licensee's Agents who need such access for the purpose of the Licensee exercising its rights under this Agreement.

13.3 The Licensee shall take all reasonable steps to maintain and safeguard the security of the Licensed Data. The Licensee shall further ensure that its employees, servants, Consultants, Licensee's Agents, and business associates maintain the security of the Licensed Data and use this Licensed Data solely for the purposes permitted under this Agreement.

14 WARRANTY

14.1 The Licensor warrants that it has the full right, power and authority to grant to the Licensee all rights, which are conferred upon the Licensee under this Agreement.

14.2 Except to the extent that statutory warranties may not be excluded and subject to the warranties contained in the provisions of this clause, all warranties express or implied as to quality, suitability, and fitness for purpose or otherwise are excluded.

15.3 The Licensor does not warrant that the Licensed Data is error free, accurate, reliable, complete or suitable for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which the Licensee might incur as a result of the Licensed Data being inaccurate or incomplete in any way and for any reason.

15 LIMITATION OF LIABILITY

- 15.1 Except as expressly provided to the contrary in this Agreement, the Licensor shall not be under any liability to the Licensee and the Licensee hereby releases and discharges the Licensor from any claim, action or proceedings in respect of any loss or damage (including consequential loss or damage) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of:
- (1) the supply of the Licensed Data pursuant to this Agreement or the failure or omission on the part of the Licensor to comply with its obligations under this Agreement; and/or
 - (2) any data supplied by the Licensee as part of a Licensed Data Product.
- 15.2 Except as expressly provided to the contrary in this Agreement, all warranties, whether express, implied, statutory or otherwise, relating in any way to the subject matter of this Agreement or to this Agreement generally, are excluded. Where any Act of Parliament implies in this Agreement any term, and that Act avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such term, such term shall be deemed to be included in this Agreement. However, the liability of the Licensor for any breach of such term shall, if permitted by that Act be limited, at the option of the Licensor, to the replacement of the Licensed Data.
- 15.3 The Licensee warrants that it has not relied on any representation made by the Licensor, which has not been stated expressly in this Agreement, nor has it relied upon any descriptions or illustrations or specifications contained in any document including any catalogues or publicity material produced by the Licensor and not expressly referenced in Schedule A.
- 15.4 In respect of the release and discharge referred to in clause 15.1, it is agreed by the Licensee that the Licensor may plead such release or discharge as a bar to any claim, action or proceeding brought by the Licensee against the Licensor in respect of any matters referred to in clause 15.1.

16 INDEMNITY

- 16.1 The Licensee shall indemnify the Licensor, and shall keep the Licensor indemnified against any loss, costs, expenses, damages and liability of any kind which the Licensor may sustain or incur:
- (1) arising directly or indirectly from any claim relating to any Licensed Data or Licensed Data Products made or permitted to be made by the Licensee, or relating to any derivative data produced by or on behalf of the Licensee which incorporates the Licensed Data; or
 - (2) which the Licensor would not have suffered or incurred but for the Licensee's breach of this Agreement, negligence, or other wrongful act or omission.
- 16.2 Without limiting the foregoing, the Licensee shall indemnify the Licensor against any loss, costs, expenses, damages and liability which the Licensor may sustain or incur as a result of any person's reliance on the Licensed Data whether or not any such reliance is notified to the Licensor by the Licensee.
- 16.3 If a Licensee's Agent, Consultant, Value Adding Reseller or End User does an act or suffers an omission, in respect of the Licensed Data or Licensed Data Products and:
- (1) that Licensee's Agent, Consultant, Value Adding Reseller or End User is one who derived some rights concerning the use of the Licensed Data or Licensed Data Products directly or indirectly from the Licensee or one over whom the Licensee is or should reasonably have been in a position to exercise control; and

- (2) that act or omission, if done or suffered by the Licensee would have been in breach of this Agreement;
- then the Licensee shall be deemed to have done the relevant act or suffered the relevant omission.

17 OBLIGATIONS OF THE LICENSEE

- 17.1 The Licensee shall remit to the Licensor all fees payable to the Licensor, in accordance with the provisions of Schedule C.
- 17.2 The Licensee shall notify the Licensor immediately if the Licensee becomes aware of any unauthorised use of the whole or part of any Licensed Data or Licensed Data Product.
- 17.3 The Licensee shall use its best efforts to promote the Licensed Data, products and services generated from the Licensed Data, and the good name of the Licensor.
- 17.4 The Licensee shall use its best efforts to promptly bring to the attention of the Licensor any unethical or dishonest dealings in relation to the marketing or support of Licensed Data or Licensed Data Products which the Licensee may discover and considers would be relevant to the use and resale of the Licensed Data.
- 17.5 The Licensee shall give the Licensor such assistance and co-operation as it reasonably requires in connection with the operation of this Agreement.
- 17.6 The Licensee shall ensure that it does not corrupt or introduce any errors into, the Licensed Data.
- 17.7 The Licensee agrees to diligently enforce the terms of all sub-licences it issues under the terms of this Agreement and to promptly notify the Licensor of all actions taken to resolve any breaches discovered.

18 PROPER RECORDS AND RIGHT TO INSPECT

- 18.1 The Licensee shall maintain a register for the Licensor. The Licensee shall provide a report of all amendments, deletions or additions to the register on request from the Licensor. The report will include the following information from the register when requested:
- (1) a unique identifier for each Licensee's Agent and Value Adding Reseller;
 - (2) the business name;
 - (3) contact name;
 - (4) address where the Licensed Data Product is normally located; and
 - (5) a description of Licensed Data Product provided.
- 18.2 The Licensor at its expense may inspect and copy all licence related records held by the Licensee and the Licensee shall make such information available for inspection and copying given reasonable notice.
- 18.3 In the event of termination of this Agreement pursuant to clause 19.1, the Licensor has a right upon the giving of one (1) days written notice to the Licensee, to inspect and copy at its expense all such records held by the Licensee in respect of this Agreement.

19 TERMINATION

19.1 Without limiting the generality of any other clause in this Agreement, the Licensor may terminate this Agreement immediately by notice in writing if:

- (1) the Licensee fails to perform any of its obligations or responsibilities under this Agreement;
- (2) default is made by the Licensee in payment of the Fees payable pursuant to Schedule C and such default is not remedied within thirty (30) days after written notice specifying such default and requiring the Licensee to remedy the same has been given by the Licensor to the Licensee
- (3) an order is made or a resolution is passed for the winding up or the dissolution without winding up of the Licensee;
- (4) the Licensee suspends payment of its debts or is unable to pay its debts within the meaning in the Corporations Law;
- (5) a receiver is appointed to the Licensee;
- (6) the Licensee becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
- (7) the Licensee is placed under official management or a controller is appointed to investigate the affairs of the Licensee;
- (8) the Licensee, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- (9) the Licensee, being a natural person, dies; or
- (10) the Licensee ceases or threatens to cease conducting its business in the normal manner.

19.2 This Agreement may be terminated by either party giving the other party twelve (12) months written notice.

20 EFFECTS OF TERMINATION

20.1 Upon termination of this Agreement for any reason whatsoever:

- (1) All rights granted by the Licensor to the Licensee shall cease immediately.
- (2) The Licensed Data shall be returned to the Licensor forthwith and: all copies shall be erased from all forms of storage by the Licensee; and the Licensee shall provide a written certificate to the Licensor specifying either that the Licensed Data has been destroyed, returned or otherwise, as directed by the Licensor within seven (7) days of termination.
- (3) Sub-licences issued to Value Adding Resellers with respect to the Licensed Data will remain valid until the next renewal date for the sub-licence.
- (4) The parties agree that termination of this Agreement by the Licensor shall not derogate from or prejudice any other rights of the Licensor against the Licensee in respect of anything done or omitted to be done by the Licensee under this Agreement.
- (5) The parties agree that notice of termination of this Agreement by either party pursuant to clause 19.2, does not relieve the Licensee of its obligations to pay the fees specified in Schedule C and the Licensee shall continue to be liable to pay those fees up to the date that the termination takes effect.

21 WAIVER

21.1 None of the conditions of this Agreement shall be waived or deemed to be waived, except by notice in writing signed by the party waiving the right.

22 VARIATION

22.1 No agreement or understanding that varies or amends this Agreement shall bind either party unless and until agreed to in writing by both parties.

23 APPLICABLE LAW

23.1 The parties hereby agree that this Agreement shall be governed by and construed in accordance with the law of the State of Queensland and the parties submit to the courts of that State.

24 ENTIRE AGREEMENT

24.1 This Agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements either oral or written between the parties with respect to the subject matter referred to in this Agreement.

25 ASSIGNMENT

25.1 Subject to the terms and conditions of this Agreement, neither this Agreement nor any rights granted hereunder may be assigned or sub-licensed in any manner whatsoever by the Licensee.

26 FUTURE LEGISLATION

26.1 The parties acknowledge that future legislation, including but not limited to privacy legislation, may cause limitations or restrictions to be placed upon the Licensor's ability to deliver some of the components of the Licensed Data.

26.2 This Agreement will not be terminated if the legislation places limitations or restrictions upon the Licensor's ability to deliver components of the Licensed Data to the Licensee. The Agreement shall continue so far as it is not in breach of the legislation or exposes either party to a penalty or other legislative sanction.

26.3 In this event the Licensor may at its discretion:

- (1) modify the Licensed Data to conform to limitations or restrictions of disclosure or other limitations imposed by this legislation;
- (2) continue to supply the Licensed Data provided that such provision does not breach the legislation and expose either party to a penalty or other legislative sanction; and
- (3) withhold any component/s that are in breach of the legislation or expose the Licensor to any sanctions.

26.4 The Licensee agrees to comply with any future legislation and/or Government policy that imposes restrictions or limitations on the Licensee's use of the Licensed Data, including any restrictions or limitations relating to supply of Licensed Data to any Licensee's Agent, Consultant, Value Adding Reseller or End User.

27 SEVERABILITY

27.1 If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement shall remain otherwise in full force apart from such provisions that shall be deemed deleted.

28 TIME OF THE ESSENCE

28.1 Time shall be the essence of this Agreement.

29 STATE GOVERNMENT AGENCIES

29.1 Where the Licensor and the Licensee are not separate legal entities (e.g. where both are State Government Departments) these licence conditions operate as a Memorandum of Understanding. Notwithstanding that in such circumstances these licence conditions are not legally enforceable, both parties shall perform their respective obligations and receive their respective benefits in good faith.

30 CLAUSES TO SURVIVE TERMINATION

30.1 The following clauses will survive termination or expiration of this Agreement -

- (1) Clause 9 (Ownership); Clause 10, 11, 12 (Permitted Use);
- (2) Clause 13 (Confidentiality) Clause 14 (Warranty);
- (3) Clause 15 (Limitation of Liability); Clause 16 (Indemnity).

31 SERVICE OF NOTICES

31.1 Notices under this Agreement may be delivered by prepaid postage or certified mail, by hand, or by facsimile transmission as follows:

To the Licensor:

_____ (Position)
 _____ (Business Unit Name)
 _____ (Address)
 _____ (Address)
 _____ (Address)

Telephone: _____ Facsimile:

To the Licensee:

_____ (Position)
 _____ (Business Unit Name)
 _____ (Address)
 _____ (Address)

_____ (Address)

Telephone: _____

Facsimile:

31.2 Notices shall be deemed to be given:

- (1) five (5) days after deposit in the mail with postage prepaid;
- (2) when delivered by hand;
- (3) if sent by facsimile transmission, upon completion of transmission. The parties agree that where notice is given by facsimile the original document shall be sent on the same day as the transmission is sent.

BEFORE SIGNING THIS AGREEMENT THE PARTIES MUST ENSURE THAT THE PERMITTED USE CLAUSES AT CLAUSES 11 AND 12 HAVE BEEN DELETED (IF NECESSARY) TO PROPERLY REFLECT THE STATUS OF THE LICENSEE AS INDICATED IN THE FOLLOWING TABLE:

| Licensee | Permitted Use Clauses |
|-------------------------------------|---|
| Reseller | Clause 10 applies but clauses 11 and 12 must be deleted |
| Value Adding Reseller (“VAR”) | Clauses 10 and 11 apply but clause 12 must be deleted. |
| Open Value Adding Reseller (“OVAR”) | Clauses 10, 11 and 12 apply. |

The parties have executed this Agreement as follows:

LICENSOR:

SIGNED for and on behalf of)
The Licensor by)
_____)

Title (Print Title))
_____)

____/____/____)
Name (Print Name)

-----)
(Signature) (Date)

a Delegated Officer of the Licensor.

in the presence of:)
_____)

____/____/____)
Witness (Print Name)

-----)
(Signature) (Date)

LICENSEE:

Executed for and on behalf of)
The Licensee)
by authority of the Directors)
_____)

Title (Print Title))
_____)

____/____/____)
Name (Print Name)

-----)
(Signature) (Date)

in the presence of _____)
_____)
_____)

Witness (Print Name) ----- (Signature)

SCHEDULE A – Defining the Licensed Data

1 DATA SPECIFICATIONS

- 1.1 The Licensed Data consists of the data elements listed as follows:
<Describe the data clearly, completely and unambiguously, but do not duplicate information where this exists in product descriptions or in metadata.

e.g. “The XYZ Dataset as described in XYZ Product Description Issue #11 dated dd/mm/yyyy”
Where no such documentation exists then list the principal component data items>
- 1.2 The Licensor may alter the technical specifications (including components) of the Licensed Data during the course of this Agreement in accordance with its business operations and shall provide at least six (6) months notice in writing to the Licensee of each planned alteration.
- 1.3 The Licensed Data will be supplied as specified and in the format defined in these Data Specifications or such other format that the Supplier shall determine from time to time in accordance with clause 1.2 above.
- 1.4 The parties acknowledge that the Licensee has relied upon the representations (set out below) contained in the following documents produced by the Licensor prior to entering into this Agreement: -

(List the documents containing the representations as well as the representations themselves upon which the Licensee has relied. If there are no such documents/representations insert “Nil”.)

2 DELIVERY MEDIA

| Medium | Selection (Y/N) |
|--|------------------------------|
| CD-ROM | |
| File Transfer (by arrangement) | |
| E-mail attachment (a maximum file size will apply) | <Email address for delivery> |
| Other (specify) | |

- 2.1 Changes in technology or systems may result in future variations to the delivery media. Reasonable notice shall be provided to the Licensee in the event that these alterations may affect the Licensee’s use of the Licensed Data.

2 UPDATES OR REISSUES TO THE LICENSED DATA

- 2.1 The Licensor will not supply any updates or reissues to the Licensed Data where the Fees payable pursuant to Schedule B are unpaid or in arrears.
- 2.2 Updates or reissues of the Licensed Data will be supplied in the same format as the initial supply of Licensed Data unless otherwise advised in writing by the Licensee.
- 2.3 The Licensor shall supply updates or reissues at a regular intervals commensurate with the level of Fees as described in Schedule C.
- 2.4 Data Ordering and Contact Officer Details

Licensed, Data Ordering and Technical Issues

Licensing Issues

<Insert officer name and contact details>

<Insert officer name and contact details>

SCHEDULE B

ORDER FORM

<NAME OF DATA SET>

Date: _____

The Licensed Data provided under this Agreement will be supplied by the Delivery Media specified and in the Format defined in the Data Specifications in Schedule A of this Agreement or such other format that the Licensor shall determine from time to time.

TO:

(Licensor Business Unit Name):

Address of Licensor:

Licensor Contact Phone No:

Licensor Contact Fax No:

Licensor Contact E-mail:

REQUESTED BY:

(Licensee Business Unit Name):

Responsible Officer ordering the Data: Name:

Position:

Contact Phone No:

Address where Data to be supplied:

Email Address for supply of data:

Purchase Order number: _____

Please supply the Data listed below under the terms of the Business Licence Agreement
 <Agreement No: xxxxxxx>

To be completed by the Licensee:

| Dataset | Currency | Format | Media |
|---------|----------|--------|-------|
| | | | |

To be completed by the Licensor

| | |
|------------------------|----|
| Value exclusive of GST | \$ |
| GST (where applicable) | \$ |
| Price inclusive of GST | \$ |
| Access Fee | \$ |
| Format conversion fee | \$ |
| | |

| | |
|-------|----|
| TOTAL | \$ |
|-------|----|

Licensor Contact Officer for Technical Issues

Title

Officer – <Name>

<Name of Licensor> Telephone – (07) xxxx xxxx

<Name of Business Unit> Facsimile – (07) xxxx xxxx

<Address 1> Email – <email address>

<Address 2> Q XXXX

SCHEDULE C – FEES PAYABLE

1 FEES FOR ONCE-OFF OR ONGOING USE OF DATA

1.1 The Licensee shall pay a Fee to the Licensor, in advance, for the once-off or ongoing use of the Licensed Data during the term of this Agreement subject to either paragraph 1.2 or 1.3 below.

| # | Fee | Unit of Measure (e.g. per record/per item/per mb.... etc) | Fee exclusive of GST | GST | Fee inclusive of GST |
|---|--|--|----------------------|-----|----------------------|
| 1 | OVAR Access Fee (Annual sublicensing, value-adding and resale) | | | | |
| 2 | VAR Access Fee (Annual value-adding and resale) | | | | |
| 3 | Reseller Access Fee (Annual) | | | | |
| 4 | Minimum Access Fee (Once off or Annual) | | | | |
| 5 | Translation Fee (per update) | | | | |
| 6 | Data Manipulation Fee (per update) | | | | |
| 7 | Re-issue fee | | | | |
| 8 | Other fee (specify) | | | | |

Note: In the table above:-

The fee set in Line #1 is the fee payable by an OVAR to the Licensor.

Where this document is a VAR licence established by an OVAR enter “N/A” in each column of Lines #1 and #3.

Where this document is a Reseller licence established by an OVAR enter “N/A” in each column of Lines #1 and #2.

The fees set in Lines #2 and #3 are the respective fees payable by an OVAR to the Licensor in respect of each Value Adding Reseller or Reseller appointed by the OVAR under this Agreement. The OVAR, VAR and Reseller licences are issued to an organisation and are independent of the unit sales of End User licences or revenues received from them. There are no product-based royalties chargeable.

The Minimum Access Fee in Line #4 may be set by the Licensor in circumstances where, for example, the OVAR wishes to establish VAR or Reseller licences for a limited geographical area and not for the whole dataset.

Fees in lines #4 to #8 are optional.

1.2 Where the Fee calculated from the number of units of measure licensed is less than the Minimum Access Fee, the Licensee shall pay a Minimum Access Fee.

- 1.3 The Licensee shall pay the full Fee for the first year of this Agreement upon the signing of this Agreement. In the second and subsequent years of this Agreement the Fee shall become due and payable by 1 July of that year.
- 1.4 In the second year of this Agreement the Licensor shall calculate a Fee on a pro-rata basis taking into consideration the Commencement Date of this Licence and this component of the year-one payment will be credited to the second year payment.
- 1.5 The Fee shall be increased by the amount of the Goods and Services Tax (GST) imposed by the Commonwealth of Australia under the GST Legislation to determine the total amount payable.

2 TRANSLATION FEES

- 2.1 If the Licensee requires the Licensed Data to be supplied in any format other than that specified by the Licensor, the Licensor will translate the data into the required format for the fee specified in the Table in section 1.1 above. This fee will apply to each and every delivery of Licensed Data that is translated into the Licensee's format.

3 REISSUE FEES

- 3.1 Should the Licensee request a reissue of the Licensed Data, where loss or damage has occurred through no fault of the Licensor the cost to reissue the Licensed Data may be levied at the fee specified in the Table in section 1.1 above.

SCHEDULE D - COPYRIGHT IMPRINTS AND DISCLAIMER**1 Pursuant to Clause 10.8 of the Agreement the following imprints will appear on all copies of the Licensed Data and Licensed Data Products transacted by the Licensee.**

1.1 The Licensee agrees that:

- (a) All reproductions of the Licensed Data, however altered, reformatted or redisplayed, shall bear the following notice:

© <insert name of original Licensor/Custodian > [year of publication]

- (b) All Licensed Data Products created and distributed by the Licensee, Licensee's Agent or Value Adding Reseller shall bear the following notice:

Based on [Dataset] provided with the permission of the <insert name of original Licensor/Custodian > (Current as at Month/Year).

1.2 Any alterations to the notices above shall be in a form approved in writing by the Licensor.

2 Appropriate Disclaimer to be displayed:

While every care is taken to ensure the accuracy of this data, the <insert name of original Licensor/Custodian > makes no representations or warranties about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which you might incur as a result of the data being inaccurate or incomplete in any way and for any reason.

SCHEDULE E - STANDARD CONDITIONS FOR INCLUSION IN LICENSEE'S LICENCE AGREEMENT WITH LICENSEE'S AGENTS**1 The Licensee acknowledges that:**

- 1.1 It will include these conditions in all licence agreements with the Licensee's Agents;
- 1.2 Amendments or changes to the terms referred to below can be made by the Licensee to allow the conditions to be incorporated into the Licensee's licence agreement with the Licensee's Agent provided that the meaning and effect of the conditions below are not altered in any way whatsoever; and,
- 1.3 All terms referred to in these standard conditions have the same meaning and effect as the definitions set out at clause 1.1 of this Agreement.

AGENTS LICENCE CONDITIONS

The Licensee's Agent may not use, internally within its organisation, value-add, enhance or alter the Licensed Data, or the Licensed Data Products in any way whatsoever.

The Licensee's Agent shall take all reasonable steps to determine that the Licensed Data Products are distributed to bona fide and lawful business interests only.

The Licensee's Agent shall not distribute or supply Licensed Data to any Value Adding Reseller of the Licensee.

OWNERSHIP

The Licensee's Agent acknowledges that it has no rights of ownership in the Licensed Data and all Intellectual Property Rights including copyright in the Licensed Data are retained by the (insert name of original Licensor/Custodian).

LIABILITY

The Licensee's Agent acknowledges that (insert name of original Licensor/Custodian) does not guarantee the accuracy or completeness of the Licensed Data, and does not make any warranty about the Licensed Data.

The Licensee's Agent agrees that the (insert name of original Licensor/Custodian) is not under any liability to the Licensee's Agent for any loss or damage (including consequential loss or damage) from any use of the Licensed Data

LICENSEE'S AGENT SUPPLIES DATA TO END USERS (WRITTEN LICENCE AGREEMENTS)

The Licensee's Agent shall not distribute or allow resale of Licensed Data or Licensed Data Products to an End User unless that End User has entered into a written licence agreement with the Licensee's Agent that incorporates the following conditions:

“OWNERSHIP

The End User acknowledges that it has no rights of ownership in the Licensed Data and all Intellectual Property Rights including copyright in the Licensed Data are retained by the (insert name of original Licensor/Custodian).

LIABILITY

The End User acknowledges that (insert name of original Licensor/Custodian) does not guarantee the accuracy or completeness of the Licensed Data, and does not make any warranty about the Licensed Data.

The End User agrees that the (insert name of original Licensor/Custodian) is not under any liability to the Licensee's Agent for any loss or damage (including consequential loss or damage) from any use of the Licensed Data

PERMITTED USE

The End User's use of the Licensed Data and Licensed Data Product shall be limited to its own personal use or for use in the ordinary course of its business. It shall not on-sell or distribute the Licensed Data or Licensed Data Product for reward to any other third party, nor shall it produce any hardcopy products incorporating this data for commercial use except for those hardcopy products which are given away free of any charges. The Hardcopy Products are to be distributed at no charge and cannot be amalgamated into or combined with other products and services for which a charge is levied or a fee paid.

The End User shall not use Licensed Data or Licensed Data Products with the intention of encroaching upon the privacy of an individual or company or other organization."

AGENT SUPPLIED ON-LINE ACCESS FOR ONCE OFF OR CASUAL END USER

The Licensee's Agent shall ensure that prior to accessing the Licensed Data Products the End User accepts the following terms and conditions by having to respond to an "I Agree" button or equivalent acceptance mechanism on the screen:

"OWNERSHIP

I acknowledge that I have no rights of ownership in the Licensed Data and all Intellectual Property Rights including copyright in the Licensed Data are retained by the (insert name of original Licensor/Custodian).

LIABILITY

I acknowledge that (insert name of original Licensor/Custodian) does not guarantee the accuracy or completeness of the Licensed Data, and does not make any warranty about the Licensed Data.

I agree that (insert name of original Licensor/Custodian) is not under any liability to me for any loss or damage (including consequential loss or damage) from my use of the Licensed Data.

PERMITTED USE

I accept that use of the Licensed Data or Licensed Data Product by me shall be limited to my own personal use or for use in the ordinary course of my business. I shall not on-sell or distribute that data for reward to any other third party, nor shall I produce any hardcopy products incorporating that data for commercial use except for those Hardcopy Products I am allowed to give away free of any charges.

The Hardcopy Products are to be distributed at no charge and cannot be amalgamated into or combined with other products and services for which a charge is levied or a fee paid.

I shall not use Licensed Data or Licensed Data Products with the intention of encroaching upon the privacy of an individual or company or other organization."

SCHEDULE F - STANDARD CONDITIONS FOR INCLUSION IN LICENSEE'S AGREEMENT WITH CONSULTANTS**1 The Licensee acknowledges that:**

- 1.1 It will include these conditions in all licence agreements with Licensee's Consultant;
- 1.2 Amendments or changes to the terms referred to below can be made by the Licensee to allow the conditions to be incorporated into the Licensee's agreement with the Licensee's Consultant provided that the meaning and effect of the conditions below are not altered in any way whatsoever; and
- 1.3 All terms referred to in these standard conditions have the same meaning and effect as the definitions set out at clause 1.1 of this Agreement.

RESTRICTIONS ON USE

The Consultant is not permitted to:

Use the Licensed Data or Licensed Data Products for any purposes whatsoever other than the specific project described in this Agreement which project is consistent with the uses of the Licensed Data or Licensed Data Product permitted under the Licence Agreement between the End User and the Licensor; or

Distribute any Licensed Data or Licensed Data Products supplied by the Licensee to the Consultant to any third party with the exception of subcontractors, provided that the Consultants subcontractor(s) sign a written agreement with the consultant which includes these standard conditions of Schedule E.

OWNERSHIP

This agreement does not confer on the Consultant any rights of ownership in the Licensed Data and all intellectual property rights including copyright in the Licensed Data are unaffected by this agreement. The (insert name of original Licensor/Custodian) retains ownership of all copies of the Licensed Data and of the Intellectual Property, whether in its original form or as reformatted or converted onto different media by the Licensee.

Upon the expiration or earlier termination of this agreement, the Consultant shall deliver up any copy of the Licensed Data in its possession to the Licensee.

WARRANTY

The (insert name of original Licensor/Custodian) does not warrant that the Licensed Data is error free.

LIMITATION OF LIABILITY

The (insert name of original Licensor/Custodian) shall not be under any liability to the Consultant (and the Consultant hereby releases and discharges it from any claim, action or proceedings) in respect of any loss or damage (including consequential loss or damage) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the use of the Licensed Data.

CONFIDENTIALITY

The Consultant agrees that the Licensed Data is valuable commercial information of the (insert name of original Licensor/Custodian).

The Consultant agrees to disclose the Licensed Data or Licensed Data Products only to such of its employees and servants who need to know it for the purpose of the Consultant exercising its obligations under this agreement.

The Consultant shall take all reasonable steps to maintain and safeguard the confidentiality of the Licensed Data or Licensed Data Products and to ensure that its employees and servants maintain the confidentiality

of the Licensed Data or Licensed Data Products and use the Licensed Data or Licensed Data Products solely for the purposes permitted under this Agreement.

INTELLECTUAL PROPERTY RIGHTS

The Consultant agrees that the Intellectual Property Rights (including copyright) in the Licensed Data at all times belongs to and remains the property of the (insert name of original Licensor/Custodian).

SCHEDULE G - STANDARD CONDITIONS FOR INCLUSION IN AN END USER'S LICENCE AGREEMENT FOR ON-LINE ACCESS TO THE LICENSED DATA**1 The Licensee acknowledges that:**

- 1.1 It will include these conditions in all End User written licence agreements;
- 1.2 Amendments or changes to the terms referred to below can be made by the Licensee to allow the conditions to be incorporated into the Licensee's written licence agreement with End Users provided that the meaning and effect of the conditions below are not altered in any way whatsoever; and
- 1.3 All terms referred to in these standard conditions have the same meaning and effect as the definitions set out at clause 1.1 of this Agreement.

OWNERSHIP

The End User acknowledges that it has no rights of ownership in the Licensed Data and all Intellectual Property Rights including copyright in the Licensed Data are retained by the (insert name of original Licensor/Custodian).

LIABILITY

The End User acknowledges that the (insert name of original Licensor/Custodian) does not guarantee the accuracy or completeness of the Licensed Data, and does not make any warranty about the Licensed Data.

The End User agrees that the (insert name of original Licensor/Custodian) is not under any liability to the End User for any loss or damage (including consequential loss or damage) from any use of the Licensed Data.

PERMITTED USE

The End User's use of the Licensed Data or Licensed Data Products shall be limited solely to its own personal use or for use in the ordinary course of its business. It shall not make available to third parties (including any corporation, institution, organization or person in any manner associated with the recipient), on-sell or distribute that data for reward to any other third party, whatsoever unless authorised by this Agreement except for hardcopy products made available to third parties free of charge. The Hardcopy Products are to be distributed at no charge and cannot be amalgamated into or combined with other products or services for which a charge is levied or a fee paid.

The End User shall not use Licensed Data or Licensed Data with the intention of encroaching upon the privacy of an individual or company or other organization.

SCHEDULE H - STANDARD CONDITIONS FOR INCLUSION IN AN END USER'S LICENCE AGREEMENT FOR ON-LINE ACCESS TO THE LICENSED DATA FOR ONCE OFF OR CASUAL END USERS (PUBLIC NETWORK / INTERNET)**1 The Licensee acknowledges that:**

- 1.1 It will include these conditions in all End User written licence agreements;
- 1.2 Amendments or changes to the terms referred to below can be made by the Licensee to allow the conditions to be incorporated into the Licensee's written licence agreement with End Users provided that the meaning and effect of the conditions below are not altered in any way whatsoever; and
- 1.3 All terms referred to in these standard conditions have the same meaning and effect as the definitions set out at clause 1.1 of this Agreement.

OWNERSHIP

I acknowledge that I have no rights of ownership in the Licensed Data and all Intellectual Property Rights including copyright in the Licensed Data are retained by the (insert name of original Licensor/Custodian).

LIABILITY

I acknowledge that the (insert name of original Licensor/Custodian) does not guarantee the accuracy or completeness of the Licensed Data, and does not make any warranty about the Licensed Data.

I agree that the (insert name of original Licensor/Custodian) is not under any liability to me for any loss or damage (including consequential loss or damage) from my use of the Licensed Data

PERMITTED USE

I accept that use of the Licensed Data or Licensed Data Product by me shall be limited to my own personal use or for use in the ordinary course of my business. I shall not on-sell or distribute the data for reward to any other third party, nor shall I produce any Hardcopy Products incorporating that data except for those Hardcopy Products I am allowed to give away free of any charges. The Hardcopy Products are to be distributed at no charge and cannot be amalgamated into or combined with other products or services for which a charge is levied or a fee paid.

I shall not use the Licensed Data or Licensed Data Product with the intention of encroaching upon the privacy of an individual or company or other organization.