DIGITAL DATA DOWNLOAD ACCESS LICENCE AGREEMENT

IMPORTANT NOTICE

PRINCIPAL LICENCE CONDITIONS

• All intellectual property rights (including copyright) in the Datasets belong to the Crown in right of South Australia.
• The Licensee is permitted to use the Dataset for the purposes of demonstration, displays, reports and statistical analysis and as prescribed for the Licence.
• Licensees are advised to be aware of any data limitations expressed in the Conditions of Licence Agreement and in any Metadata available for each Dataset.
• The Licensee is not permitted to copy or reproduce the Datasets in any form for the purposes of distribution (whether for remuneration or otherwise), sale, hire, lease or licence or otherwise commercialise the Dataset.
• Should the Licensee wish to commercialise the Dataset, other than in the manner permitted by this licence, seek a specific licence from the Supplier.

CONDITIONS OF LICENCE AGREEMENT

1. DEFINITION OF TERMS

In this Agreement, unless the context otherwise requires:

1.1. “Agreement” means this agreement to grant a Licence and includes all conditions specified in this licence, together with any variations made under Clause 16.

1.2. “Commercialise” means in respect of the Dataset or products or services derived from the Dataset, includes distributing, giving away, selling, letting for hire, or by way of trade, offering or exposing for sale or hire any article embodying the Dataset or products or services derived from or incorporating the Dataset.

1.3. “Crown” means the Crown in right of South Australia.

1.4. “Dataset” means the compilation of information comprised in the data and where relevant the medium upon which it is stored which is the subject matter of this Agreement.

1.5. “Intellectual Property Rights” means any patent, copyright, trademark, trade name, design, trade secret, know how or other form of confidential information or any right to registration of such rights and any other form of intellectual property right whether arising before or after the execution of this Agreement.

1.6. “Licence” is the Licence granted pursuant to this Agreement by the Supplier to the Licensee for the use of the Dataset.

1.7. “Licensee” means the party downloading the data and shall include its employees, officers and contracted staff.

1.8. “Metadata” means the information available for each Dataset to be used as an aid in interpreting the information contained in the Dataset.

1.9. “Personalised Contact List” means any list of names or occupations or addresses or any combination thereof compiled from the information that personally identifies the occupants of an address.

1.11. “The Supplier” means the Minister acting through the South Australian Department of Environment and Natural Resources.

1.12. The plural includes the singular and vice versa.

1.13. References to natural persons include corporations and vice versa.

1.14. A reference to a clause number is a reference to all its subclauses.

2. SCOPE OF THIS AGREEMENT

2.1. Subject to the terms and conditions of this Agreement, the Supplier grants to the Licensee a non-transferable, non-exclusive and royalty-free Licence to use the Dataset.

2.2. No failure or omission to perform or observe any of the provisions of this Agreement to be performed or observed by any party, as the case may require, shall be or be deemed to be a breach or default of this Agreement nor create any liability if the same arises from or is caused by force majeure or any cause or condition that is substantially beyond the power of that party to control or avoid.

3. ACCEPTANCE

The licensee accepts or is deemed to have accepted the terms of the Licence by pressing the “I Agree to Terms of Licence” button on the screen.

4. DURATION OF LICENCE

This Agreement commences on the date on which the data is downloaded and will continue for a period of twelve (12) months.

5. GRANT OF LICENCE

5.1. The Supplier warrants that it has the right and authority to grant the Licence to the Licensee.

5.2. Subject to the other provisions of this condition, the Supplier grants to the Licensee a non-exclusive, non-transferable and royalty-free Licence to:

5.2.1. Use, reproduce and adapt the Dataset for the purposes of demonstrations, displays, reports and statistical and spatial analysis and subject to Clause 8.2 permits its agents, consultants and contractors with which it has contracted for the provision of services to the Licensee to so use, reproduce and adapt the Dataset; and

5.2.2. Combine the Dataset with other data held by the Licensee.

5.3. The Licensee will not compile or permit any other person to compile a Personalised Contact List from the information for any purpose.

5.4. The Licensee is not otherwise permitted to commercialise the Dataset.
6. INTELLECTUAL PROPERTY

6.1. The Licensee acknowledges that all Intellectual Property Rights (other than the licence to use granted by this Agreement) and title in the Dataset shall remain vested in and remain the property of the Crown in right of State of South Australia.

6.2. The Licensee must ensure that in using the Dataset, it does not infringe the Intellectual Property Rights of the Crown.

6.3. This Licence agreement does not vest in the Crown Intellectual Property Rights in the Licensee’s methodologies or other proprietary information in existence at or prior to the date of this Agreement; or copyright in existing publications or other work produced by or on behalf of the Licensee.

7. SECURITY

The Licensee shall:

7.1. Effect and maintain adequate security measures to safeguard the Dataset from access, use or misuse, damage or destruction;

7.2. Retain the Dataset under the Licensee’s effective control.

8. CONFIDENTIALITY

8.1. The Licensee shall, subject to Clause 8.2, treat the information contained in the Dataset as private and confidential to the Licensee.

8.2. The Licensee shall take all reasonable steps to ensure that any person, including contractors and consultants employed by the Licensee, keep the information contained in the Dataset confidential and does not disclose the information contained in the Dataset to any person or use the information contained in the Dataset for any purpose other than in accordance with the provisions of this Agreement.

8.3. The Licensee’s obligations under this Clause 8 shall survive the termination of this Agreement.

9. DISCLAIMER

9.1. Although every effort has been made to ensure the correctness and accuracy of the Dataset, the Supplier makes no representations, either express or implied, as to the accuracy, currency, completeness or suitability for any particular purpose of the information and accepts no liability for any use of the Dataset or any responsibility for any reliance placed on that information. The Licensee acknowledges that the Dataset cannot be guaranteed error free and that use of the Dataset is at the user’s sole risk and that the information contained in the Dataset may be subject to change without notice.

9.2. The Licensee acknowledges that the Dataset is made available by the Supplier subject to the data limitations expressed in any Metadata available.

9.3. 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 Supplier 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 Supplier).

9.4. To the extent permitted by law the Supplier 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 information.
9.5. The Licensee acknowledges that it has exercised its independent judgement in acquiring the information and has not relied on any representation made by the Supplier 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 Supplier.

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

9.7. 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.

10. COPYRIGHT ACKNOWLEDGMENT

10.1. The Licensee acknowledges that the Dataset and, where relevant, accompanying documentation are the subject of copyright. The Licensee shall not during or any time after the expiry or termination of this Licence carry out or 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 Dataset except as otherwise expressly authorised by this Agreement.

10.2. Subject to Clause 10.3 in all circumstances where the Licensee quotes or publishes statistics or records from the Dataset a statement acknowledging that the Dataset was supplied by the Supplier must be included.

10.3. Any analysis or transformation or reworking of the Dataset shall not be attributed to the Supplier.

11. INDEMNITY

The Licensee agrees to release and indemnify the Supplier and its officers and employees in respect of all claims for loss, damage, or injury suffered by the Supplier or any third party arising out of either the Licensee’s use of the Dataset or the information or any part thereof or materials produced or derived from the information contained in the Dataset.

12. TERMINATION

12.1. The Supplier may terminate this Agreement:

12.1.1. If the Licensee is in breach of any term of this Agreement;

12.1.2. If the Supplier ceases to produce, maintain or provide the Dataset.

12.2. The Licensee may terminate this Agreement by notification in writing to the Supplier.

12.3. Upon termination of this Agreement the Licensee or its representatives shall destroy any remaining copies of the information and any documentation associated with it or otherwise return or dispose of such material in the manner directed by the Supplier.

12.4. Termination pursuant to this Clause shall be without prejudice to any other rights accruing to the Supplier prior to the date of termination including the right to pursue all remedies available at law or in equity.
13. ASSIGNMENT

13.1. The Licensee must not assign this Agreement, in whole or in part, or subcontract the performance of any of its obligations under this Agreement without the prior written consent of the Supplier.

13.2. The Supplier 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 Supplier from time to time.

14. WAIVER

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

15. GOVERNING LAW

15.1. This Agreement shall be governed by and construed in accordance with the laws of the State of South Australia.

15.2. The parties agree that the courts of South Australia will have exclusive jurisdiction to determine any proceeding in relation to this Licence Agreement.

15.3. Any proceeding brought in a Federal Court must be instituted in the Adelaide Registry of that Federal Court.

16. VARIATION

No amendment of, or addition to, the provisions of this Agreement shall be binding unless it is in writing and signed by both parties to this Agreement.

17. ENTIRE AGREEMENT

The terms and conditions contained within this Agreement constitute the entire agreement between the parties and supersede all previous agreements, understandings and negotiations, written or oral, in respect of the matters dealt with in this Agreement.