



**Queensland
Government**

Open Licence Agreement
(long form)

between the State of Queensland

and

XXXX

Licence No OPNL: 20XX/XXX

State Of Queensland (Department of Environment and Resource Management)

Licence Agreement for use of Licensed Data

1. Licence

1.1 The Licensor grants a non-exclusive, non-transferable licence to the Licensee, to use the Licensed Data for the purposes specified in this Agreement subject to the terms and conditions set out in this Agreement.

2. Definitions

2.1 In this Agreement, unless the contrary intention appears or the context otherwise requires the following definitions apply:

- (a) **Access Fee** means the fees payable in advance for ongoing access to the Licensed Data.
- (b) **Agreement** means this agreement including the attached Schedules.
- (c) **Corporations Law** means any legislation enacted by Federal or State agencies in relation to incorporated companies and includes the *Corporations Act 2001* (Cth).
- (d) **CPI** means the Australian Bureau of Statistics' Brisbane All Groups Consumer Price Index for the State of Queensland).
- (e) **Direct Marketing** means one to one marketing using personal details (eg name, address, email address), normally supported by a database, which uses one or more advertising media to effect a measurable response and/or transaction from a person and includes, but is not limited to, telemarketing, bulk email messaging (spam), postal canvassing and list brokering.
- (f) **Fees** means the fees payable for the Licensed Data and includes Access Fee, Licence Fee, Royalty Fee, credit fee and reporting fee.
- (g) **Intellectual Property Rights** means all copyright, patent application rights, patent rights, design rights, database rights, trademark rights (whether registered or unregistered), trade secrets and confidential information, all know-how, and all other rights of intellectual property.
- (h) **Licence Fee** means the fees payable in advance for annual licensing.
- (i) **Licensed Data** means the data identified in a Schedule C. It includes data that has been reformatted or converted on to a different media or translated into another format, and includes any revisions, updates or reissues provided by the Licensor during the term of this Agreement.
- (j) **Licensed Data Product** means any Value Added product derived from or based on the Licensed Data or any Licensed Data Product(s).
- (k) **Licensee** means the person specified in Schedule A as the Licensee.
- (l) **Licensee's Consultant** means any consultant, contractor or business partner of the Licensee engaged for a specific project of the Licensee.
- (m) **Licensee's Customer** means any person to whom Licensed Data Products are supplied by the Licensee (excluding a Licensee's Consultant).
- (n) **Licensor** means the State of Queensland as represented by the Department of Environment and Resource Management (DERM) or any successor.
- (o) **Licensor's Website** means www.derm.qld.gov.au and any successive website of the Licensor.
- (p) **Order Form** means the order form provided by the Licensor and used to order additional Licensed Data.
- (q) **Privacy Laws** means any legislation (or mandatory government policy, where applicable) enacted by Federal or State agencies in relation to privacy and includes the Privacy Act 1988 (Cth) and Information Privacy Act 2009 (Qld).
- (r) **Royalty Fee** means a fee payable calculated on sales of Licensed Data Products as specified in Schedule A or a Schedule D.
- (s) **SMS** (Short Messaging System) which means a message service offered by a digital cellular telephone system whereby a short alphanumeric message can be displayed on a mobile phone.
- (t) **Value Add/Adding/Added** means any repackaging which irreversibly changes the form of the Licensed Data or any augmenting or incorporation of the Licensed Data with other data. Conversion onto a different media or the translation into a different format (e.g. changing colour and formatting) of Licensed Data is not Value Adding.

2.2 The following terms have a relevant defining reference in Schedule A or a Schedule C:

Commencement Date, Data Type, Expiry Date, Records, Reports, Special Conditions, Specifications – Licensed Data, Specific Restrictions - Licensed Data, Termination Notice Period

2.3 The Licensor and the Licensee are the parties to the Agreement. Where the context so admits this includes officers, employees and agents.

2.4 A reference to the singular includes the plural and vice versa and each reference to a person includes reference to a legal entity including a corporation or organisation.

2.5 Headings are not included in the operative part of the Agreement and should not be used in interpretation of the Agreement.

2.6 Unless otherwise specified, a reference to a day means a calendar day.

2.7 References to statutes, regulations, ordinances or by-laws are deemed to extend to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing the same.

2.8 Unless otherwise specified, a reference to a clause or a schedule is reference to a clause of or a schedule to this Agreement and includes any amendment made to the clause or schedule in accordance with this Agreement.

2.9 Unless otherwise specified, a reference to a monetary amount is in Australian Dollars (\$AUD).

3. Fees and Ordering

3.1 Fees

- 3.1.1 The Licensor must publish its current Fees on the Licensor's Website. If the Licensee requests in writing a copy of the Licensor's current Fees, the Licensor must supply a written copy to the Licensee.
- 3.1.2 The Licensee must pay the Access and Licence Fees within 14 days of the date of invoice from the Licensor.
- 3.1.3 The Licensee must pay the Royalty Fee on a quarterly basis in arrears, (the quarters end 31 March, 30 June, 30 September, and 31 December), and must pay within 14 days of the date of invoice from the Licensor.
- 3.1.4 If the Licensee provides Licensed Data Products to a person in whom the Licensee has an interest or who has an interest in the Licensee, the Licensee must inform the Licensor. Where this occurs, the Licensor reserves the right to assign a value to any transaction for the purposes of calculating a Royalty Fee if the Licensor believes the transaction was undervalued. The Licensor has the final determination in this regard.
- 3.1.5 If the Licensee provides Licensed Data Products to a Licensee's Customer as a bundled product or service (eg a subscription service), a Royalty Fee is payable.
- 3.1.6 The Licensor may agree to a different Royalty Fee for a particular Licensed Data Product. The Licensee must make an application for a Royalty Fee variation including providing compelling reasons for the request. The Licensor has the final determination in this regard. Any Royalty Fee variation for a particular Licensed Data Product will be recorded in a Schedule D, which will form part of this Agreement.
- 3.1.7 The Licensor reserves the right to increase, decrease or modify the Fees for any of the following reasons:
 - (i) End of financial year.
 - (ii) Legislative change.
 - (iii) Direction of the relevant Minister.
 - (iv) CPI.

3.2 Interest on Payments and Credit and Reporting Fees

- 3.2.1 Any invoice amount remaining unpaid after 14 days from the date of invoice will attract interest on any amount outstanding. The interest on any unpaid invoice amounts will be calculated with a 4% margin on the current Commonwealth Bank Corporate Overdraft Reference Rate (Monthly Charging Cycle) and will apply (and be payable by the Licensee) on the first day the amount is overdue.
- 3.2.2 A quarterly credit facility fee of \$100 is payable by the Licensee. If payment is made within 14 days of the invoice date and there are no outstanding invoices payable from the previous quarters, the Licensor will waive the quarterly credit facility fee. If the quarterly credit facility fee is not waived, the Licensor will send a separate invoice to the Licensee.
- 3.2.3 A monthly royalty reporting fee of 10% of the Royalty Fee amount payable for the previous quarter (inclusive of GST) or \$500 whichever is the greater is payable by the Licensee. If a quarterly report is provided within the time specified in Clause 5.1 and Clause 5 of Schedule A, the Licensor will waive the monthly royalty reporting fee. If the monthly royalty reporting fee is not waived, the Licensor will send a separate invoice to the Licensee.

3.3 Ordering additional Licensed Data

- 3.3.1 The Licensee must complete an Order Form supplied by the Licensor to order additional Licensed Data. The Licensee must submit the Order Form with payment unless the requested Data Type and/or relevant Access Fee are not evident on the Licensor's website in which case the Order Form may be used to request a quote for any additional Licensed Data.
- 3.3.2 If additional Licensed Data is ordered the Licensor will provide an additional Schedule C that will form part of this Agreement. If the Licensee does not agree to the terms of the additional Schedule C the Licensee must inform the Licensor, the additional Licensed Data will not be supplied and the Licensor will return any Fees paid.

3.4 Supply of Licensed Data

- 3.4.1 The Licensor must supply the requested Licensed Data to the Licensee as soon as is practicable following the execution of this Agreement and receipt of an Order Form and the applicable payment.
- 3.4.2 The Licensed Data supplied under this Agreement will be supplied according to the specifications in a Schedule C. The Licensor may change the Specifications of the Licensed Data in a Schedule C, including the format in which Licensed Data is supplied, from time to time.

4. Licensee's obligations and use of Licensed Data

4.1 Ownership

- 4.1.1 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 are unaffected by this Agreement.
- 4.1.2 The Licensor retains ownership of the Intellectual Property Rights that it has in the Licensed Data, whether in its original form or as reformatted or converted onto different media by the Licensee.

4.2 Data Integrity

- 4.2.1 The Licensee must not corrupt or introduce any errors into the Licensed Data.
- 4.2.2 The Licensee must advise the Licensor of any errors in the Licensed Data as they are identified.

4.3 Confidentiality

- 4.3.1 The Licensee agrees that the Licensed Data is the valuable commercial information of the Licensor.
- 4.3.2 The Licensee agrees to provide access to the Licensed Data to only such of its employees and Licensee's Consultants who need such access for the purpose of the Licensee exercising its rights under this Agreement.

- 4.3.3 The Licensee must take all reasonable steps to maintain and safeguard the security of the Licensed Data in its database. The Licensee must further ensure that its employees and Licensee's Consultants maintain the security of the Licensed Data and use this data solely for the purposes permitted under this Agreement.
- 4.4 Permitted Use**
- 4.4.1 The Licensee may combine the Licensed Data with other data owned by or licensed to the Licensee to create Licensed Data Products, provided that nothing will derogate from the ownership of the Licensed Data including Intellectual Property Rights in the Licensed Data Products.
- 4.4.2 The Licensee may use the Licensed Data or the Licensed Data Products for its own internal business purposes (except as specified in clause 6.5.7)
- 4.4.3 The Licensee may supply Licensed Data to a Licensee's Consultant in accordance with the conditions of this Agreement.
- 4.4.4 The Licensee may supply Licensed Data Products to the Licensee's Customers and Licensee's Consultants subject to the conditions of this Agreement.
- 4.5 Prohibited Use**
- 4.5.1 The Licensee must not supply Licensed Data (except as contained in Licensed Data Products) to a Licensee's Customer or any other third party (except for a Licensee's Consultant).
- 4.5.2 The Licensee must not use or allow the use of the Licensed Data or Licensed Data Products for Direct Marketing or with the intention of encroaching upon the privacy of an individual and the Licensee must comply with the Privacy Laws.
- 4.5.3 Any specific restrictions for Licensed Data are outlined in a Schedule C in the section Specific Restrictions - Licensed Data and the Licensee acknowledges having read and understood the restrictions and agrees to be bound by the restrictions set out in that section.
- 4.5.4 Further distribution or Value Adding is not permitted for Licensed Data Product(s) distributed by SMS.
- 4.6 Copyright and Disclaimer Notices**
- 4.6.1 The Licensee must ensure that all copies of the Licensed Data and all Licensed Data Products display the relevant notice as specified in Schedule B.
- 4.7 Copying and storage of Licensed Data**
- 4.7.1 The Licensee is permitted to make copies of the Licensed Data for the purpose of this Agreement and for security purposes. The copy for security purposes must not be used for any purpose other than providing security backup against loss of the original Licensed Data.
- 4.7.2 If the Licensee wishes to engage a Licensee's Consultant for off site storage, manipulation or facilities management of the Licensed Data then the Licensee must comply with the conditions in clause 4.8.
- 4.8 Supply of Licensed Data to Licensee's Consultants**
- 4.8.1 The Licensed Data may be supplied to a Licensee's Consultant where the Licensee's Consultant receives no commercial consideration from the use of the Licensed Data except for the fee paid by the Licensee.
- 4.8.2 The Licensee must not provide Licensed Data to a Licensee's Consultant unless the Licensee's Consultant has first entered into a written licence agreement with the Licensee in accordance with clause 4.10.
- 4.9 Distribution of Licensed Data Products**
- 4.9.1 The Licensee must distribute the Licensed Data Products to Licensee's Customers and Licensee's Consultants in accordance with the following procedures:
- (i) All Licensed Data Products must display the relevant notice as specified in Schedule B.
 - (ii) If the Licensee's Customer or Licensee's Consultant is being permitted to further distribute or Value Add the Licensed Data Product (noting that further distribution or Value Adding is not permitted for Licensed Data Product(s) distributed by SMS) then that person must either:
 - (a) enter into a signed written licence agreement with the Licensee in accordance with clause 4.10; or
 - (b) enter into a licence agreement by consent via an open network/internet environment in accordance with clause 4.10 and the Licensee's Customer or Licensee's Consultant must accept the terms and conditions by responding affirmatively to an "I Agree" (or similar wording to the same effect) button on the screen.
 - (iii) The Licensee's Customer or Licensee's Consultant must receive metadata with all Licensed Data Product(s) and the metadata must incorporate as a minimum the metadata supplied with the Licensed Data. If the Licensed Data Product(s) are distributed by SMS, the Licensee is not required to include the metadata in the SMS but the metadata must be available to the Licensee's Customer or Licensee's Consultant on the Licensee's website.
- 4.10 Terms for agreements**
- 4.10.1 Agreements entered into between the Licensee and the Licensee's Consultants and Licensee's Customers must contain the appropriate terms specified in Schedule B and must not be inconsistent with the terms and conditions of this Agreement.
- 4.10.2 Any amendments or changes to the terms specified in Schedule B made by the Licensee must not alter the meaning and effect of the terms specified in Schedule B in any way whatsoever.
- 4.10.3 The Licensee must not waive any obligation, specified in Schedule B, required in agreements entered into between the Licensee and the Licensee's Consultants or Licensee's Customers.
- 4.10.4 All terms in Schedule B have the same meaning and effect as the definitions at clause 2.1.

4.11 Enforcement

4.11.1 The Licensee must take all reasonable steps to enforce the terms and conditions specified in this clause 4.

5. Proper Records, right to inspect and audit

- 5.1 The Licensee must maintain Records for the Licensor. The Records must contain the details specified in Schedule A and the Licensee must provide Reports as specified in Schedule A to the Licensor within the timeframe specified in Schedule A.
- 5.2 The Licensor at its own expense may inspect and copy all Records, and any other information held by the Licensee in relation to this Agreement, and the Licensee must make such information available for inspection and copying given 7 day's written notice.
- 5.3 Notwithstanding the provisions of clause 5.2, the Licensor may, at its own expense, appoint an independent auditor to inspect the Records and any other information held by the Licensee in relation to this Agreement on an annual basis in accordance with the following conditions:
- 5.3.1 The Licensor must give a minimum of 7 days notice.
- 5.3.2 The Licensee must use its best endeavours to co-operate with the Licensor, its agents or authorised representatives during any inspection and the Licensee must make all information available for inspection.
- 5.3.3 During the audit the Licensor acting through its agents or authorised representatives may at any time and without notice enter any premises where the Licensor reasonably believes copies of Records or documents relating to Licensed Data may be kept.
- 5.3.4 If the audit in this clause 5.3 discloses any underpayment of Royalty Fees the Licensee must pay any amount due within 14 days of the completion of the audit. If the audit discloses an underpayment by the Licensee of more than 5% of the amount due to be paid to the Licensor then in addition to paying the amount due the Licensee must pay either the cost of the audit or one half of the amount of the underpayment whichever is the lesser.
- 5.4 In the event of termination of this Agreement pursuant to clause 6, the Licensor has a right upon the giving of 1 day's written notice to the Licensee, to inspect and copy at its expense, all such Records and any other information held by the Licensee in relation to this Agreement.

6. Expiry or termination

- 6.1 The licence granted under this Agreement will take effect on and from the Commencement Date and will remain current until the Expiry Date unless terminated under this clause 6.
- 6.2 Either party may terminate this Agreement by giving the other party the amount of written notice specified in Schedule A as Termination Notice Period.
- 6.3 Without limiting the effect of any other clause in this Agreement, the Licensor may terminate this Agreement immediately by notice in writing in any of the following circumstances:
- 6.3.1 The Licensee fails to perform any of its obligations or responsibilities under this Agreement including failing to pay the Fees.
- 6.3.2 The Licensee does any of the following: suspends payment of its debts; or is unable to pay its debts within the meaning in the Corporations Law; or becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency or administration including but not limited to an order or resolution for winding up or dissolution or appointment of a receiver, controller, administrator or liquidator; or ceases or threatens to cease conducting its business in the normal manner; being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; being a natural person, dies or becomes legally incompetent.
- 6.3.3 The Licensor becomes aware of any evidence of Direct Marketing involving the Licensed Data or Licensed Data Products. The Licensor must first give written notice to the Licensee and provide the Licensee with 14 days to respond to any allegation by the Licensor that the Direct Marketing provisions of this Agreement have been breached. The Licensor must consider the Licensee's response, however the Licensor has the final determination in this regard.
- 6.4 If the Licensor is entitled to terminate the Agreement under clause 6.3 the Licensor may choose (without prejudice to the Licensor's right to terminate) to suspend access to and use of the Licensed Data until the Licensor is satisfied that any breach of the Agreement has been remedied. The Licensor has the final determination in this regard. All other aspects of this Agreement will remain operative including payment of Fees.
- 6.5 Upon termination or expiry of this Agreement all of the following things will happen:
- 6.5.1 All rights granted by the Licensor to the Licensee will cease immediately.
- 6.5.2 Upon termination of this Agreement by either party under clause 6.2 above:
- (i) if an Access Fee has been paid past the date of termination the Licensor must refund the balance of the Access Fee pro-rata for that period after the date the termination takes effect. The Licensor will refund any balance of the Access Fee within 14 days of the date the termination taking effect.; or
- (ii) if an Access Fee has not been paid up to the date of termination, the Licensee must pay a pro-rata Access Fee up to the date that the termination takes effect. The Licensee must pay the pro-rata Access Fee within 14 days of issue of the Licensor's invoice.
- 6.5.3 The Licensor will refund the balance of any Access Fee if termination is made under clause 6.3 above, however the Licensor is entitled to first deduct its full costs of termination and the Licensor has the final determination in this regard.

- 6.5.4 The Licensee must pay any outstanding Royalty Fee to the Licensor.
 - 6.5.5 The Licensor will not refund any Licence Fee and will not partially refund any Licence Fee.
 - 6.5.6 The Licensee must erase all copies of licensed data from all forms of storage (including any copies that Licensee's Consultants hold) and provide a written certificate to the Licensor confirming this action.
 - 6.5.7 The Licensee may continue to use Licensed Data Products for internal purposes in accordance with clause 4.4.2. The Licensee may store a copy of Licensed Data Products in a data archive for records purposes. The Licensee must not create or distribute any further Licensed Data Products without the specific written permission of the Licensor.
 - 6.5.8 Clauses 4.1 (Ownership), 4.3 (Confidentiality), 4.5.2 in relation to Licensed Data Products (Prohibited Use), 8 (Warranty, Liability and Indemnity) and Clause 3 of Schedule C Specific Restrictions – Licensed Data will survive and continue to have full force and effect.
 - 6.5.9 Any other rights the parties have against the other in respect of anything done or omitted by the parties under this Agreement will not be affected.
- 6.6 Notwithstanding anything contained in this Agreement, the Licensee's sole remedy in the event of termination or purported termination of this Agreement by the Licensor (whether or not the Licensor has the right to terminate) is for damages (including interest) and the Licensee agrees that the Licensor may plead this provision as a bar to any action.

7. Dispute Resolution

- 7.1 A party must not commence legal proceedings relating to this Agreement unless the party has complied with this clause 7. However, this clause 7 will not apply where a party seeks urgent interlocutory relief from a court.
- 7.2 If a dispute arises between the parties in respect of this Agreement (the 'Dispute') then the following procedure applies:
 - 7.2.1 The party alleging the Dispute must notify in writing the existence and nature of the Dispute to the other party involved in the Dispute within 7 days of the dispute arising (the 'Notification').
 - 7.2.2 Upon receipt of a Notification, each party involved in the Dispute must appoint a senior representative with authority to resolve the Dispute, and those senior representatives must attempt in good faith to resolve the Dispute.
 - 7.2.3 If the Dispute is not resolved as provided in clause 7.2.2 within 7 days of receipt of the Notification, then any party involved in the Dispute may refer the Dispute to mediation as provided in clause 7.2.4 and must do so before initiating proceedings in a court to resolve the Dispute.
 - 7.2.4 Any Dispute that is referred to mediation must be mediated by a mediator appointed by the parties in accordance with rules agreed by the parties or, if the parties cannot agree on the appointment of a mediator or rules of mediation, a mediator appointed by and rules determined by the President, Queensland Law Society. The parties must attempt in good faith to resolve the Dispute at mediation.
 - 7.2.5 The costs of any mediation conducted pursuant to clause 7.2.4 will be shared equally between the parties to the Dispute, unless the mediator determines otherwise.
 - 7.2.6 If the Dispute is not resolved within 14 days of referral to mediation any party is free to initiate proceedings in a court in respect of the Dispute.

8. Warranty, liability and indemnity

8.1 Warranty

- 8.1.1 The Licensor supplies the Licensed Data to the Licensee at the Licensee's own risk. In particular, and without limitation, the Licensor does not warrant that the Licensed Data is current, accurate or complete and gives no warranty as to the condition, quality or fitness of the Licensed Data for the Licensee's requirements.
- 8.1.2 The Licensee acknowledges and agrees that, in entering into this Agreement, it has not relied on any representations made by the Licensor (or its officers, employees or agents). In particular, and without limitation, the Licensee has not relied on any descriptions, illustrations or specifications contained in any document (including any catalogues or publicity material produced by the Licensor).

8.2 Exclusion of liability

- 8.2.1 Except for warranties expressly made in this Agreement, all conditions, warranties, undertakings or representations express or implied and whether arising by statute, general law or otherwise are, to the extent permitted by law, expressly excluded and the terms of this Agreement are the only terms and conditions applying. Where the law implies a warranty, the Licensor expressly limits its liability under any such warranty to the replacement, or re-supply of any Licensed Data supplied under this Agreement.
- 8.2.2 Subject to clause 8.2.1, under no circumstances is the Licensor (or its officers, employees or agents) liable to the Licensee for any direct, indirect or consequential loss or damage, howsoever caused (including, without limitation, sustained as a result of negligence), and sustained by the Licensee in connection with this Agreement or the Licensed Data or use of the Licensed Data.

8.3 Indemnity

- 8.3.1 The Licensee will at all times indemnify and keep indemnified the Licensor (and its officers, employees and agents) from and against any loss or liability (including reasonable legal costs and expenses) incurred by any of those indemnified arising from any claim, demand, suit, action or proceeding (including a claim for a breach of a person's Intellectual Property Rights) by any person against any of those indemnified where the loss or liability arose out of, in connection with, or in respect of:
 - (i) the Licensed Data or use of the Licensed Data;
 - (ii) the Licensed Data Products; or
 - (iii) any breach of this Agreement by the Licensee.

This indemnity will be granted irrespective of whether legal proceedings are instituted and the means, manner or nature of any settlement, compromise or determination. The Licensor may recover a payment from the Licensee under this indemnity before it makes the payment in respect of which the indemnity is given.

8.3.2 The indemnities provided for in this clause 8.3 will apply in any of the following circumstances:

- (i) The Licensee has been in breach of this Agreement including non-compliance with its obligations under clause 4.
- (ii) The Licensee has been negligent.
- (iii) The Licensee has committed a wrongful act or omission.

9. General conditions

- 9.1 None of the conditions of this Agreement will be waived or deemed waived, except by notice in writing signed by the party waiving the right.
- 9.2 No agreement or understanding that varies or amends this Agreement will bind either party unless and until agreed to in writing by both parties.
- 9.3 This Agreement will be governed by and construed in accordance with the law of the State of Queensland.
- 9.4 The parties must give each other such assistance and cooperation as is reasonably required for the performance of this Agreement.
- 9.5 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.
- 9.6 Subject to the terms and conditions of this Agreement, neither this Agreement nor any rights granted under it may be assigned or sub-licensed in any manner whatsoever by the Licensee, without the prior written consent of the Licensor.
- 9.7 Any provision, or part of a provision, of this Agreement that is illegal, unenforceable or partly unenforceable is, where possible to be severed to the minimum extent necessary to make this Agreement enforceable (unless this would materially change the intended effect of this Agreement).
- 9.8 The Licensee is not and does not become a partner, employee or agent of the Licensor under this Agreement and must not allow itself to be represented as such. Further, the Licensee does not have the power or authority, directly or indirectly or through its employees or agents, to bind the Licensor to any agreement with a Licensee's Consultant, Licensee's Customer or other third party or otherwise to contract, negotiate or enter into a binding relationship for or on behalf of the Licensor, or to make any representation on behalf of the Licensor.
- 9.9 Notices under this Agreement may be delivered by prepaid postage or certified mail, by hand, by fax transmission or by email transmission. Notices are deemed given 5 days after deposit in the mail with postage prepaid or certified, when delivered by hand, or if sent by fax or email transmission upon completion as evidenced by a fax or email transmission record. Where notice is given by fax or email the original document must be posted on the same day as the transmission is sent. The addresses for service of notices are listed in Schedule A.
- 9.10 Where the Licensor and the Licensee are not separate legal entities (eg where both are State Government Departments) these licence conditions operate as a memorandum of understanding. Notwithstanding that these licence conditions are not legally enforceable; both parties must perform their respective obligations and receive their respective benefits in good faith.
- 9.11 The Licensor reserves the right to exclude future supply of certain particulars forming part of the Licensed Data if the Chief Executive of the Licensor is satisfied on reasonable grounds that inclusion of the data may result in inappropriate use or disclosure. Furthermore the Licensor may prohibit disclosure or limit distribution of certain particulars forming part of the Licensed Data.
- 9.12 If any restrictions or limitations on the supply or use of Licensed Data or Licensed Data Products are imposed by any future legislation or Government policy then the Licensee agrees to comply with any such restrictions or limitations, including any restrictions or limitations relating to supply of Licensed Data or Licensed Data Products to any Licensee's Consultants or Licensee's Customers. In this event the Licensor may, at its discretion do all or any of the following:
 - 9.12.1 Modify the Licensed Data to conform to limitations or restrictions of disclosure or other limitations imposed.
 - 9.12.2 Withhold any data fields that are in breach of legislation or expose the Licensor to any sanctions.
 - 9.12.3 Adjust the Fees on a pro-rata basis to take into account the loss of any part of the Licensed Data.
- 9.13 In the event of any delay in the supply of Licensed Data by the Licensor caused by factors beyond the reasonable control of the Licensor:
 - 9.13.1 The Licensor will notify the other party as soon as reasonably possible.
 - 9.13.2 The Licensor must use its best endeavours to rectify the cause of the delay as soon as reasonably possible.
 - 9.13.3 The delay in supply is not a breach of any obligation under this Agreement.
- 9.14 Special Conditions to this Agreement (if any) are contained in Schedule A.

Execution

Licensor:

Signed for and on behalf of the **STATE OF QUEENSLAND** as)
represented by the DEPARTMENT OF ENVIRONMENT AND)
RESOURCE MANAGEMENT)

by _____)
a Delegated Officer of the (print name))

(signature)

this _____ day of _____ 201__)
in the presence of:)

Witness (print name)

(signature)

Licensee: (use one signing block only and delete the remainder)

[Government]

Signed for and on behalf of)
_____)

(ABN _____)

by _____)
a Delegated Officer (print name))

(signature)

this _____ day of _____ 201__)
in the presence of:)

Witness (print name)

(signature)

(OR) [Company]

Signed for and on behalf of)
_____)

ACN _____)
in accordance with s127 of the *Corporations Act 2001*)

this _____ day of _____ 201__)

Name – Sole Director/Director (print name))

(signature)

Name – Director/Secretary (print name))

(signature)

Notes for companies signing agreements:

- Seal is not required – but may be used.
- Sole director companies simply insert name and sign as **sole director** (striking out director).
- Other companies sign by **two directors** or by a **director and secretary**, striking out the inapplicable title.
- Where an **attorney or other agent** executes this Agreement on behalf of a company, the form of execution must indicate the source of this authority and a certified copy of the authority must be provided to the Licensor.
- A witness is not required in any case, except for an attorney or other agent where the source of authority requires a witness.

Schedule A – Licensee, Licence Number & Licensing Issues

1. Licence Number

Licence Agreement Number: OPNL: 20XX/XXXX

2. Licensee

Name: XXXX
ABN: XXXX
ACN (if applicable): XXXX
Incorporation Number (if applicable): XXXX
Address (for service of notices): XXXX
Fax (for service of notices): XXXX
Email Address (for service of notices): XXXX
Contact Name: XXXX
Phone Number: XXXX

3. Dates / Termination & Renewal

Commencement Date: XX/XX/XXXX
Expiry Date: XX/XX/XXXX [default: 30 June 2010 – licences will not be issued past this date]
Termination Notice Period: XXXX [default: 6 months]

4. Records

The Licensee must record:

- (a) For audit purposes in electronic form all of the following:
 - (i) Copies of all invoices including tax invoices.
 - (ii) Appropriate records to allow reports (by Licensed Data Product) to be generated on a quarterly basis.
- (b) For each Licensee's Consultant to whom Licensed Data is provided:
 - (i) The business name (and ABN if applicable) of the Consultant.
 - (ii) Contact details.
 - (iii) What Licensed Data was provided.
- (c) For each Licensed Data Product:
 - (i) A description of the Licensed Data Product.
 - (ii) What Licensed Data was utilised.

5. Reports required and Timeframe

The Licensee must supply the Licensor with a report, within 7 business days after the end of each quarter, showing the following things:

- (a) Description of each Licensed Data Product including Licensed Data utilised.
- (b) For each Licensed Data Product distributed or sold:
 - (i) The date of sale or distribution.
 - (ii) The value associated with distribution if no Tax Invoice (if applicable) or revenue generated to offset free distribution.
 - (iii) Tax Invoice number of sale and the sale value as recorded on Tax Invoice (if applicable).
 - (iv) Royalty payable.
- (c) If the report is for a nil return, a report showing same must be submitted.

6. Royalty

The Royalty Fee will be calculated as 20% of the total value (GST exclusive) of the components of a tax invoice (data and/or service) to the Licensee's Customer(s) that is based on or contains the Licensed Data and / or any revenue generated to offset free distribution (eg: advertising/sponsorship). Any Royalty Fee variation for a particular Licensed Data Product will be recorded in a Schedule D.

7. Licensing Issues (including service of notices to Licensor)

Manager
Product Delivery
Department of Environment and Resource Management
GPO Box 2454, BRISBANE, QLD, 4001
Phone (07) 3896 3999
Fax: (07) 3896 3165
Email: Productdelivery@derm.qld.gov.au

8. Special Conditions

[Default: Nil]

Notwithstanding clauses 4(a)(ii), 5(b) and 5(c) of this schedule A, if a Licensed Data Product variation has been agreed to in a schedule D, where a fixed royalty has been agreed for the use of the data, the requirements of clauses 4(a)(ii), 5(b) and 5(c) of this schedule A are waived.

The royalty fee is payable quarterly in advance if a Licensed Data Product variation has been agreed to in a schedule D, where a fixed royalty has been agreed for the use of the data. This royalty fee will be increased consistent with the manner described in clause 3.1.7 of this agreement.]

Sample

Schedule B - Notices

1. Licensed Data Products Notices and Terms

All **Licensed Data Products** (with the exception of those sent by SMS) must bear the following notice:

Based on or contains data provided by the State of Queensland (Department of Environment and Resource Management) [year]. In consideration of the State permitting use of this data you acknowledge and agree that the State gives no warranty in relation to the data (including accuracy, reliability, completeness, currency or suitability) and accepts no liability (including without limitation, liability in negligence) for any loss, damage or costs (including consequential damage) relating to any use of the data. Data must not be used for direct marketing or be used in breach of the privacy laws.

Licensed Data Products sent by SMS must bear the following notice:

Subject to disclaimer at [www.licenseewebsite.com.au/disclaimer].

And the website [www.licenseewebsite.com.au/disclaimer] must bear the following notice:

Based on or contains data provided by the State of Queensland (Department of Environment and Resource Management) [year]. In consideration of the State permitting use of this data you acknowledge and agree that the State gives no warranty in relation to the data (including accuracy, reliability, completeness, currency or suitability) and accepts no liability (including without limitation, liability in negligence) for any loss, damage or costs (including consequential damage) relating to any use of the data. Data must not be used for direct marketing or be used in breach of the privacy laws.

Licensed Data Products Terms (if further distribution and/or Value Adding are permitted)

Definitions

- **Direct Marketing** means one to one marketing using personal details (eg name, address, email address), normally supported by a database, which uses one or more advertising media to effect a measurable response and/or transaction from a person (including a corporation or organisation) and includes, but is not limited to, telemarketing, bulk email messaging (spam), postal canvassing and list brokering
- **Licensed Data** means data that is owned by or licensed to the State of Queensland (Department of Environment and Resource Management) and has been licensed to [XXXX Licensee] under an agreement.
- **Licensed Data Product(s)** means any Value Added product derived from or based on the Licensed Data or any Licensed Data Product(s).
- **Privacy Laws** means any legislation (or mandatory government policy, where applicable) enacted by Federal or State agencies in relation to privacy and includes the Privacy Act 1988 (Cth) and Information Standard 42 – Information Privacy (Qld).
- **Value Add/Added/Adding** means any repackaging which irreversibly changes the form of the Licensed Data or any augmenting or incorporation of the Licensed Data with other data. Conversion onto a different media or the translation into a different format (e.g. changing colour and formatting) of Licensed Data is not Value Adding.

Permitted Use

- I agree that my rights to distribute and/or Value Add the Licensed Data Product(s) expire on [insert Expiry Date from Schedule A section 3]. After that date I may still use Licensed Data Product(s) for my own purposes but I must not distribute or create Licensed Data Product(s) by Value Adding.
- I agree that I will not use the Licensed Data Product(s) with the intention of encroaching upon the privacy of an individual or for Direct Marketing and I will comply with the Privacy Laws.
- If I distribute and/or Value Add Licensed Data Product(s) I will do all of the following:
 - Show this acknowledgement: on all Licensed Data Product(s) except those sent by SMS:
Based on or contains data provided by the State of Queensland (Department of Environment and Resource Management) [year]. In consideration of the State permitting use of this data you acknowledge and agree that the State gives no warranty in relation to the data (including accuracy, reliability, completeness, currency or suitability) and accepts no liability (including without limitation, liability in negligence) for any loss, damage or costs (including consequential damage) relating to any use of the data. Data must not be used for direct marketing or be used in breach of the privacy laws.
 - Show this acknowledgement on Licensed Data Product(s) sent by SMS:
Subject to disclaimer at [www.customernamewebsite.com.au/disclaimer].
And the website [www.customernamewebsite.com.au/disclaimer] will show the following notice
Based on or contains data provided by the State of Queensland (Department of Environment and Resource Management) [year]. In consideration of the State permitting use of this data you acknowledge and agree that the State gives no warranty in relation to the data (including accuracy, reliability, completeness, currency or suitability) and accepts no liability (including without limitation, liability in negligence) for any loss, damage or costs (including consequential damage) relating to any use of the data. Data must not be used for direct marketing or be used in breach of the privacy laws.
- Include metadata with the Licensed Data Product(s) and the metadata will incorporate as a minimum the metadata supplied with the Licensed Data Product(s).
- If I allow my customer to further distribute and/or Value Add the Licence Data Product I will require a licence agreement to be entered into between myself and my customer that includes the terms in this agreement (the Licensed Data Product Terms) and the same expiry date for distribution and/or Value Adding of Licensed Data Product(s). The agreement with my customer will either be in writing and signed or, if in electronic form, have an "I agree" (or similar wording to the same effect) button that must be clicked.

2. Licensed Data Notices and Terms

All reproductions of the **Licensed Data**, however altered, reformatted or redisplayed, must bear the following notice:

© State of Queensland (Department of Environment and Resource Management) [year]. In consideration of the State permitting use of this data you acknowledge and agree that the State gives no warranty in relation to the data (including accuracy, reliability, completeness, currency or suitability) and accepts no liability (including without limitation, liability in negligence) for any loss, damage or costs (including consequential damage) relating to any use of the data. Data must not be used for direct marketing or be used in breach of the privacy laws.

Licensed Data Permitted Use Terms (Consultants)

Definitions

- **Direct Marketing** means one to one marketing using personal details (eg name, address, email address), normally supported by a database, which uses one or more advertising media to effect a measurable response and/or transaction from a person (including a corporation or organisation) and includes, but is not limited to, telemarketing, bulk email messaging (spam), postal canvassing and list brokering.
- **Licensed Data** means data that is owned by or licensed to the State of Queensland (Department of Environment and Resource Management) and has been licensed to [XXXX Licensee] under an agreement.
- **Privacy Laws** means any legislation (or mandatory government policy, where applicable) enacted by Federal or State agencies in relation to privacy and includes the Privacy Act 1988 (Cth) and Information Standard 42 – Information Privacy (Qld).

Ownership

I acknowledge that I have no rights of ownership in the Licensed Data. The State of Queensland (Department of Environment and Resource Management) is the owner of the intellectual property rights including copyright in and to the Licensed Data or has the right to make it available under licence arrangements, and has made a licence arrangement with [XXXX Licensee]. External contributors to Licensed Data are listed on the website www.derm.qld.gov.au.

Liability

I acknowledge that the State of Queensland (Department of Environment and Resource Management) gives no warranty in relation to the data (including accuracy, reliability, completeness, currency or suitability) and accepts no liability (including without limitation, liability in negligence) for any loss, damage or costs (including consequential damage) relating to any use of the data.

Permitted Use

- I will not use the Licensed Data for any purposes whatsoever other than the specific consultancy project that it was provided for.
- I will not use the Licensed Data with the intention of encroaching upon the privacy of an individual or for Direct Marketing and I will comply with the Privacy Laws.
- I will not distribute any Licensed Data supplied to me to any third party with the exception of subcontractors, provided that my subcontractors sign a written agreement with me that includes the terms in this agreement.
- Upon expiration or earlier termination of my consultancy agreement or if required to do so by the party I am consulting for I will return or destroy any copies of the Licensed Data in my possession.
- I agree to display the following notice on all reproductions of the Licensed Data, however altered, reformatted or redisplayed:
 - © State of Queensland (Department of Environment and Resource Management) [year]. In consideration of the State permitting use of this data you acknowledge and agree that the State gives no warranty in relation to the data (including accuracy, reliability, completeness, currency or suitability) and accepts no liability (including without limitation, liability in negligence) for any loss, damage or costs (including consequential damage) relating to any use of the data. Data must not be used for direct marketing or be used in breach of the privacy laws.

Schedule C.XX – Licensed Data and Specifications

1. Licence Details

Licence Agreement Number:

OPNL:20XX/XXXX

2. Licensed Data

Data Type:

XXXX

Coverage	Supply media	Frequency of Supply	Format	Datum	Other
xxx	xxx	xxx			

3. Specific Restrictions - Licensed Data

XXXX

4. Specifications – Licensed Data

XXXX

5. Licensed Data Contacts

Licensor

Contact Name:

XXXX

Address:

Department of Environment and Resource Management

XXXX

Phone:

(07) XXXX

Fax:

(07) XXXX

Email:

XXXX

Licensee

Contact Name:

XXXX

Address:

XXXX

XXXX

Phone:

(XX) XXXX

Fax:

(XX) XXXX

Email:

XXXX

6. Signatures for Schedule C [for changes to Schedule C subsequent to initial execution of Agreement]

Licensor

Signature: _____

Signatory Name: _____

Date: _____

Licensee

Signature: _____

Signatory Name: _____

Date: _____

Schedule D.XX – Licensed Data Product Royalty Fee (Deed of Variation)

1. Licence Details

Licence Agreement Number: OPNL:20XX/XXXX

2. Licensed Data Product

Description including Licensed Data utilised:
 XXXXX (Should the Licensee use another data set supplied by the department this will require a different schedule).]

3. Agreed Royalty Variation

XXXX% or \$XXXX or Nil royalty

4. Execution [for Schedules D subsequent to initial execution of Agreement]

Licensor:

SIGNED for and on behalf of the **STATE OF QUEENSLAND** as represented by the DEPARTMENT OF ENVIRONMENT AND RESOURCE MANAGEMENT)

by _____)
 a Delegated Officer of the (print name))

 (signature)

this _____ day of _____ 201__)
 in the presence of:)

 Witness (print name)

 (signature)

Licensee: (use one signing block only and delete the remainder)

[Government]

Signed for and on behalf of _____)

(ABN _____)

by _____)
 a Delegated Officer (print name))

 (signature)

this _____ day of _____ 201__)
 in the presence of:)

 Witness (print name)

 (signature)

(OR) [Company]

Signed for and on behalf of _____)

ACN _____)
 in accordance with s127 of the *Corporations Act 2001*)

this _____ day of _____ 201__)

 Name – Sole Director/Director (print name))

 (signature)

 Name – Director/Secretary (print name))

 (signature)

Notes for companies signing agreements:

- Seal is not required – but may be used.
- Sole director companies simply insert name and sign as **sole director** (striking out director).
- Other companies sign by **two directors** or by a **director and secretary**, striking out the inapplicable title.
- Where an **attorney or other agent** executes this Agreement on behalf of a company, the form of execution must indicate the source of this authority and a certified copy of the authority must be provided to the Licensor.
- A witness is not required in any case, except for an attorney or other agent where the source of authority requires a witness.