
DEPARTMENT OF NATURAL RESOURCES AND WATER



**Queensland
Government**
Natural Resources
and Water

**Wholesale/Reseller
Licence Agreement
for Product Distribution
between the State of Queensland
and**

XXXX

WR PD Licence No: 20XX/XXXX

1 Licence

- 1.1 The Licensor grants a non-exclusive, non-transferable licence to the Product Distributor, to distribute the Products 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) **Agreement** means this agreement including any attached Schedules.
 - (b) **Commencement Date** means the date specified in Schedule A.
 - (c) **Discount Pricing Arrangement** means the various discounts offered for Products as specified in Schedule A.
 - (d) **Expiry Date** means the date specified in Schedule A.
 - (e) **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.
 - (f) **Licensor** means the State of Queensland represented by the Department of Natural Resources and Water (NRW) or any successor.
 - (g) **Licensor's Website** means www.nrw.qld.gov.au and any successive Licensor's website.
 - (h) **Moral Rights** means the moral rights of attribution of authorship, right not to have authorship falsely attributed and right of integrity of authorship specified in Part IX of the *Copyright Act 1968 (Cth)*.
 - (i) **Product Distributor** means the person referred to in Schedule A as the Product Distributor.
 - (j) **Product Distributor Category** means the category type as specified in Schedule A.
 - (k) **Product Listing** means a list of products supplied by the Licensor from time to time which may be ordered by the Product Distributor.
 - (l) **Products** means those individual items specified in the Product Listing that may be ordered in accordance with clause 3 (Ordering and Costs) by the Product Distributor at any time during the term of the Agreement.
 - (m) **Recommended Retail Price (RRP)** means that price recommended as the retail price of the individual Products by the Licensor, and published on the Licensor's Website (as amended from time to time) and in any document in substitution, used by the Licensor.
- 2.2 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.
- 2.3 Headings are not included in the operative part of the Agreement and should not be used in interpretation of the Agreement.
- 2.4 Unless otherwise specified, a reference to a day means a calendar day.
- 2.5 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.

3 Ordering, accounts & product costs

- 3.1 Product orders must be delivered, mailed, faxed or emailed to the Contact Officer as advised in Schedule A.
- 3.2 Orders must comply with the volumes specified in Schedule A and the Product Listing to obtain the relevant Discount Pricing Arrangement.
- 3.3 Postage and handling charges will not apply to orders that are posted to an address in Australia.
- 3.4 The Licensor will supply the Product in accordance with the Discount Pricing Arrangement specified in Schedule A.
- 3.5 Product Distributors, where the Product Distributor Category is wholesaler as listed in Schedule A, may apply to the Licensor in writing for a credit account in accordance with the Licensor's credit account policy.
- 3.6 Where orders are placed using the Product Distributor's approved Licensor's credit facility all of the following will apply:
- (i) A monthly credit facility fee of \$100 is payable by the Licensee to the Licensor.
 - (ii) If payment is made within 30 days of the invoice date and there are no outstanding invoices payable from previous months the Licensor will waive the monthly credit facility fee. If the monthly credit facility fee is not waived a separate invoice will be sent to the Licensee by the Licensor.

4 Obligations of Product Distributor and permitted use

- 4.1 The ownership of the Products does not pass to the Product Distributor until all fees outstanding have been paid.
- 4.2 The Product Distributor may distribute the Products to any third parties including third parties who intend to resell the Products.
- 4.3 This Agreement does not transfer ownership of any Intellectual Property Rights in the Products to the Product Distributor.

5 Expiry or termination

- 5.1 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 5.
- 5.2 Either party may terminate this Agreement by giving the other party 1 months written notice.
- 5.3 If the Licensor gives notice to terminate the Agreement, any subsequent orders placed by the Product Distributor during the termination period will require full payment at the time the order is placed.
- 5.4 Upon termination or expiry of this Agreement all of the following things will happen:
- (i) All rights granted by the Licensor to the Product Distributor will cease immediately.
 - (ii) The Product Distributor may distribute any Products it has at the time of termination or expiry of this Agreement.
 - (iii) Clauses 3.6 (time for payment and credit facility fee) 4.1 (Ownership) and 6 (Warranty, Liability and Indemnity) will survive and continue to have full force and effect.
 - (iv) Any invoice payments outstanding upon termination or expiry of this Agreement must be paid in accordance with this Agreement.
 - (v) 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 Warranty, liability and indemnity

6.1 Warranty

- (i) The Licensor supplies the Products at the Product Distributor's own risk. In particular, and without limitation, the Licensor does not warrant that the Products are current, accurate or complete and gives no warranty as to the condition, quality or fitness of the Products for the Product Distributor's requirements.
- (ii) The Product Distributor 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 Product Distributor has not relied on any descriptions, illustrations or specifications contained in any document (including any catalogues or publicity material produced by the Licensor).

6.2 **Exclusion of liability**

- (i) 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 Products supplied under this Agreement.
- (ii) Subject to clause 6.2 (i), under no circumstances is the Licensor (or its officers, employees or agents) liable to the Product Distributor for any direct, indirect or consequential loss or damage, howsoever caused, sustained by the Product Distributor in connection with this Agreement or the Products (including, without limitation, sustained by the Product Distributor as a result of negligence, except when sustained as a result of negligence or wilful misconduct of the Licensor (or its officers, employees and agents)).

6.3 **Indemnity**

- (i) The Product Distributor 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 or Moral Rights) by any person against any of those indemnified where the loss or liability arose out of, in connection with, or in respect of the Products or any breach of this Agreement by the Product Distributor.
- (ii) 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 Product Distributor under this indemnity before it makes the payment in respect of which the indemnity is given.

7 **General Conditions**

- 7.1 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.
- 7.2 No agreement or understanding that varies or amends this Agreement will bind either party unless and until agreed to in writing by both parties.
- 7.3 This Agreement will be governed by and construed in accordance with the law of the State of Queensland.
- 7.4 The parties must give each other such assistance and cooperation as is reasonably required for the performance of this Agreement.
- 7.5 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.
- 7.6 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 Product Distributor, without the written consent of the Licensor.
- 7.7 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).
- 7.8 The Product Distributor 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 Product Distributor does not have the power or authority, directly or indirectly or through its employees or agents, to bind the Licensor to any agreement with any 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.
- 7.9 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 of this Agreement.
- 7.10 Where the Licensor and the Product Distributor 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.
- 7.11 The Licensor may review the performance of the Product Distributor at any time. If the Licensor believes that the Product Distributor Category in Schedule A (ie. Wholesaler or Reseller) does not reflect the distribution network and methodology of the Product Distributor, the Licensor may change the Product Distributor Category by giving 1 months written notice to the Product Distributor.

Execution

Licensor:

SIGNED for and on behalf of **THE STATE OF QUEENSLAND**

by _____
a Delegated Officer of the [print name]
DEPARTMENT OF NATURAL RESOURCES AND WATER

[Signature]
(ABN 83 705 537 586) this _____ day of _____ 200____
in the presence of:

Witness [Print Name] [Signature]

Product Distributor:

Executed for and on behalf of

[Print Name or Company Name]

ACN _____
by authority of the directors (if an incorporated company)

[Name or Name of Director/Secretary] [Signature]

[Name of Director (if applicable)] [Signature]

this _____ day of _____ 200____
in the presence of:

Witness [Print Name] [Signature]

Schedule A – Product Distributor, Dates, Licence Number, Discount Pricing Arrangement

1. Product Distributor

Name: XXXX
ACN (if applicable): XXXX
ABN: XXXX
Address (for service of notices): XXXX
Fax (for service of notices): XXXX Phone Number: XXXX
Email Address (for service of notices): XXXX
Delivery Address: XXXX
Contact name (Principal / General Manager): XXXX
Contact name (for billing): XXXX
Product Distributor Category: Wholesaler / Reseller [Strike out non-applicable option]

2. Licensor's Contact Officer

For Ordering

Address: Warehouse Manager
Product Warehouse
Department of Natural Resources and Water
Locked Bag 40 Coorparoo Delivery Centre, QLD 4151
Fax: (07) 3896 3510 Phone Number: (07) 3896 3202
Email Tim.Hudd@nrw.qld.gov.au

For Service of Notices

Address: Director Product Services
Department of Natural Resources and Water
GPO Box 1401 Brisbane QLD 4001
Fax : (07) 3405 5567 Phone Number: (07) 3405 5563
Email: marketing@nrw.qld.gov.au

3. Dates

Commencement Date: XX/XX/XXXX Expiry Date: 30 June 2008

4. Licence Number

Licence Agreement Number: WR PD:20XX/XXXX

5. Discount Pricing Arrangement

- 5.1 All prices referred to in the Discount Pricing Arrangement are the Licensor's Recommended Retail Prices (RRP) inclusive of GST.
- 5.2 Where the Product Distributor is categorised as a Wholesaler; the following apply:
- (i) All Products excluding CD products, photographic products, mosaics
 - a) Where 250 or more Products are ordered – RRP less 62.5% applies; or
 - b) Where an order is received for less than 250 Products -- RRP less 50% applies.
 - (ii) Packaged Digital Data Products and Geoscape
 - a) Where 10 or more Products are ordered – RRP less 62.5% applies; or
 - b) Where an order is received for less than 10 Products -- RRP less 50% applies.
- 5.3 Where the Product Distributor is categorised as a Reseller; the following apply:
- (j) All Products excluding CD products, photographic products, mosaics
 - a) Where 15 or more Products are ordered –RRP less 30% applies; or
 - b) Where an order is received for less than 15 Products -- RRP less 20% applies.
 - (ii) Packaged Digital Data Products and Geoscape
 - a) Where 5 or more Products are ordered –RRP less 30% applies; or
 - b) Where an order is received for less than 5 Products -- RRP less 20% applies.
- 5.4 Where the Product Distributor is categorised as either a Wholesaler or Reseller the following apply:
- (i) Where 5 or more CD products (other than Packaged Digital Data and Geoscape) are ordered – RRP less 30% applies.
 - (ii) Where less than 5 CD products are ordered – RRP less 20% applies.
 - (iii) Where 1 or more Photographic Products (including Aerial Photography) are ordered – RRP less 30% applies;
 - (iv) Where 1 or more Digital Aerial Photography Mosaics are ordered – RRP less 20% applies.