

MODEL DATA ACCESS AND MANAGEMENT AGREEMENT

DATA ACCESS AND MANAGEMENT PROTOCOL Including a Model Licence Agreement for the Supply of Data

1 Preamble

- 1.1 Commonwealth, State and Territory partnership projects, especially in natural resource management, increasingly recognise the importance of developing agreements to reduce the frequency, cost and complexity of negotiating data transactions. Arrangements define the roles and responsibilities of project partners and the ongoing arrangements for access and management of data both needed for and created by joint projects.
- 1.2 This Data Access and Management Protocol has been developed to define a set of consistent and workable arrangements that can be used by cross-jurisdiction partnership projects to streamline access to data and derived information products, and to ensure consistency with protocols, standards and guidelines for the development of an Australian Spatial Data Infrastructure. This infrastructure is described in Attachment C.
- 1.3 It is suggested that this protocol be adopted for all relevant projects. It can be turned into an agreement by addition of project specific information. This detail may be covered in a schedule, dealing with issues such as parties to the agreement, contact details, list(s) of project data covered by the agreement, specific arrangements for accessing project data and references to other project documents.

2 Purpose

- 2.1 The purpose of this Protocol is to support a cooperative and consistent Australia-wide approach to data access and management.
- 2.2 The Protocol establishes a mutual recognition of the rights and responsibilities of all parties in relation to ongoing access to data and information products developed by the Commonwealth, States and Territories. The Protocol recognises the rights of all parties – data custodians, owners and users of data.
- 2.3 The Protocol defines access, ownership, custodianship, archiving and updating arrangements for data collected, developed for and used in partnership projects. It seeks to avoid duplication and overlap in the collection and maintenance of data; and maximise the investment in data by facilitating its access and use.

3 Guiding Principles

- 3.1 The Protocol is based on the following principles:
 - Efficiency – unnecessary duplication of data collection and management between governments, agencies, industry groups and the community should be minimised.

- Simplicity – data access and management arrangements should be simple to understand and designed to minimise compliance costs, preferably through the application of consistent and Australia-wide standard approaches such as this agreement.
- Standards – Arrangements should be consistent across jurisdictions and be delivered within the framework for development of the Australian Spatial Data Infrastructure.

3.2 Through ANZLIC – the Spatial Information Council, all jurisdictions have agreed on the national principles for spatial data management. In summary, those relevant to this agreement are:

- Data are developed and maintained to **meet agreed international or national guidelines or standards** for the management of spatial information as endorsed by ANZLIC or through national coordination arrangements. *This will ensure the data are comparable and consistent where required and can be used for various applications.*
- Data are **documented** in the Australian Spatial Data Directory. The documentation must be current and provide enough information for users to determine whether the data are suitable for their purpose. *This will ensure that users can easily find out whether suitable data already exist and the limitations on use of those data sets.*
- There is **easy, efficient and equitable access** to data for all sectors of the community in format, location, cost and under conditions that does not inhibit their use. *This will ensure that users can obtain the data.*
- Data are **accompanied by a licence** when transferred, clearly setting out the conditions under which the data may be used, the rights and responsibilities of the data provider, and the rights and responsibilities of the data receiver. Licence arrangements are required to ensure that the spatial information is accessible, while protecting copyright, intellectual property, privacy and confidentiality. The rights of the individual and governments in relation to confidentiality, privacy, security and intellectual property must be preserved. *This will ensure that the rights of all parties are protected and understood.*
- Before funding data collection, organisations and jurisdictions should actively **identify and exploit** the many existing **opportunities for cooperation and sharing of fundamental spatial data** to avoid duplication and to maximise benefits of investment in data collection.

4 Application of this Protocol

4.1 Any project, with agreement of involved parties, may use the Protocol.

5 Definitions and Interpretation

5.1 The following definitions apply to this Protocol:

Custodian: means the nominated body, or person, responsible for the development and/or the management of the data, and who has the right to determine the conditions applying to the use or distribution of the data.

Project: means a project using this protocol with agreement of all Parties.

Existing Data: means data already existing prior to the project.

Project Data: means data or products developed in a project subject to this protocol.

Archived Data: means data used in a project which is held in a dynamic database or secure repository for data that meets the standards required by clauses 6.8 to 6.12.

Licence: means a document that authorises the use of data for specified purposes, and specifies any restrictions on the use of data.

Owner: means the individual(s), organisation(s) or jurisdictions that hold the intellectual property rights over a particular set of information or data.

Parties: means those to which the agreement applies.

6 Access Arrangements

6.1 For existing data, the distributors of the data requested by one party may recover costs of providing access to existing data to the other party or parties. In such circumstances this will be at no more than the marginal cost of dissemination (described at Attachment A.) Additional costs associated with changing the content, quality or format of the source data to meet specific requirements and the requirements of clients may be recovered by the owner or custodian.

6.2 For project data there are two categories of access:

- i) Restricted Access
- ii) Community Access

In general, data and derived products funded through Government funded or part funded partnership projects using this Protocol will be classed as Community Access. Details of physical access arrangements for project data may be described in an attached schedule.

6.3 Community Access allows use by other parties and the public if the copyright interests of the owner(s) are protected. In order to maximise the use of project data, data categorised as Community Access will be made available through mechanisms developed under the Australian Spatial Data Infrastructure, allowing users to:

- find data through directories within the Australian Spatial Data Directory;
- view map data through on-line mapping services;
- download for use on their own systems where allowed by owners / custodians of the data.

- 6.4 There will be no charge to view or down load project data categorised as Community Access over the Internet. Users must accept any licence conditions attached to the data before using the data. A model licence agreement is included at Attachment B.
- 6.5 Restricted Access includes data for which confidentiality and use provisions apply and are available to the parties only by agreement of the data owner(s) on a case-by-case basis under conditions as outlined in a licence agreement. Where confidentiality obligations limit access to or use of data, parties must comply with those confidentiality obligations as specified by the owners(s) of the data. Any data subject to confidentiality obligations or conditions of use that limit access must be clearly identified as Restricted Access.
- 6.6 Should a data set be classified as Restricted Access because of confidentiality requirements the project participants may then make available as Community Access an aggregated data set that meets any issues required in retaining confidentiality.
- 6.7 Over time, data may be reclassified from one access category to another, subject to the approval of the data owner or custodian, and agreement by the parties. *The aim is to reduce restrictions on data access as circumstances change.*

Access to historical data

- 6.8 The intention and purpose of archiving data used in a partnership project is to ensure that data are available for other uses such as on-going monitoring, natural resource assessments or as agreed by the data custodian.
- 6.9 Data should be archived unless this is prevented due to commercial, confidentiality, copyright, or previous contractual arrangements.
- 6.10 All archiving of data and other information must provide appropriate security and must ensure the continuing recoverability of archived data and must include metadata and/or other relevant supporting documentation to enable use of that data and other information.
- 6.11 All archived data must be made available to agreed parties as described in the data access arrangements described in clauses 6.1 to 6.7.
- 6.12 Archive data will be time stamped and version controlled and will not be changed, amended or altered unless this is necessary to correct an error occurring during the archiving process.

Metadata

- 6.13 The user has the right to expect that the content, quality and origins of the data will be clearly defined by the owner or custodian. As a minimum requirement the data should be accompanied by metadata conforming to the ANZLIC Metadata Guidelines with the data quality elements completed to a satisfactory level.
- 6.14 Metadata will accompany the dissemination of all spatial data.

- 6.15 All products derived from the data —electronic and hard copy—will contain an acknowledgment of the source of constituent data, data quality statements, and any disclaimers required by custodians. This information may be contained in the relevant publicly available metadata record.
- 6.16 All metadata will be freely exchanged. Data custodians will provide access to metadata statements through the Australia Spatial Data Directory (ASDD) consistent with jurisdictional practices and standards.

7 Data Development, Maintenance and Updates

- 7.1 If data are updated and categorised as ‘Community Access’, access to the updated data will be provided as stipulated in clause 6.3.
- 7.2 Project data should be developed or updated using standards, protocols and coordination arrangements as endorsed by ANZLIC – the Spatial Information Council within the Australian Spatial Data Infrastructure.

8. Standard Contract Conditions When Funding Project Data

- 8.1 For the Projects using this Protocol, all parties will use standard conditions in contracts and agreements when funding project data. Conditions will seek to improve the availability of consistent data to government, industry and the community. The conditions will ensure that:
- Project data are collated and made available using nationally agreed standards and guidelines for the Australian Spatial Data Infrastructure as endorsed by ANZLIC – the Spatial Information Council;
 - Data are fully documented in the Australian Spatial Data Directory;
 - The data are available through a single licence agreement, such as the model licence agreement in Attachment B; and
 - Any limitations imposed on the use of data are consistent with section 6.2

9 Operation of the Protocol

- 9.1 This Protocol may be amended at any stage at the request of any party and with the agreement of all parties.
- 9.2 ANZLIC – the Spatial Information Council will continue to monitor usage of this document, review its contents and keep it up to date with improvements in best practice in data management, including conditions relevant to the model licence agreement.

MARGINAL COST OF DISSEMINATION

The marginal cost of dissemination includes the costs directly related to the dissemination of the data. It is considered to be the costs of physical dissemination eg. cost of media, extraction, postage packaging and distribution. It may also include costs of reformatting data to meet specific user requirements.

The costs of capture, maintenance, improvement or storing of the data are not components of the marginal cost of dissemination. The costs of computing equipment are excluded unless the equipment is being used solely to support the data dissemination service.

For products delivered over the Internet, where the registration and distribution processes are largely automated and requires little manual intervention, the marginal cost of dissemination is very low and the administrative costs of charging exceed the expected long-term efficiency gains.

Model Licence Agreement for the Supply of Data Categorised as 'Community Access'

Important: The completed Schedule and Licence Conditions set out below will constitute a legal agreement between the data supplier ("the Supplier") and you ("the Licensee") in relation to the data. If you agree with the Conditions, please click on the appropriate button.

If you are entering into this agreement on behalf of a company or organisation, you warrant that you have the authority to do so.

This licence is supported by the Data Access and Management Protocol.

The Schedule

Date: the [day] day of [month], [year].

Licensor

The [licensor jurisdiction] is represented by the [licensor agency] The contact details are:

Name/Title:	
Address:	
Telephone:	
Facsimile:	
E-mail Address:	

Licensee

Name/Title:	
Company/Organisation:	
Address:	
Telephone:	
Facsimile:	
Email Address:	

The Data

[Description field from metadata]

Data are supplied via electronic transfer media. Accompanying metadata for the data is also supplied.

Contributors / Joint Owners:

Item: [generated automatically from metadata]

Contributor:

Additional Conditions:

Item: [generated automatically from metadata]

Contributor:

Additional Conditions:

Item: [generated automatically from metadata]

Contributor:

Additional Conditions:

[etc for each contributor]

Use

The data will be used by the Licensee for: [inserted by applicant]

[ACCEPT] / [DO NOT ACCEPT]

Licence Conditions

1 Interpretation

1.1 In these Conditions, unless the contrary intention appears:

"Commercialise" in respect of the Data or a product or service derived from the Data, includes distributing, giving away, selling, letting for hire, or by way of trade, offering or exposing for sale or hire any article embodying the Data or any product or service derived from or incorporating the Data;

"Contributor" means:

- I. an agency which is custodian of a particular item of Data on behalf of that Jurisdiction; or
- II. a party identified as a contributor or joint owner of particular items of Data which are the subject of this Licence Agreement;

"Data" means the data to which access is made available and includes any Enhancements to the Data;

"Enhancement", in relation to the Data, includes any modification, adaption or redevelopment of the Data, any work derived from the Data, machine readable representations of any of the foregoing and any associated material intended at the time of its creation to be used primarily in conjunction with the Data;

"Intellectual Property" includes all copyright, and all rights in relation to registered and unregistered trademarks (including service marks), registered designs and confidential information (including trade secrets and know-how), and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

"Licence" means the licence referred to in Condition 3.

2 Duration

- 2.1 The Licence commences on the date of the Agreement as set out in the Schedule, and continues in force unless terminated in accordance with Condition 10.1.

3 Licence Conditions

- 3.1 The Licensor grants to the Licensee, a royalty-free, non-exclusive, non-transferable licence to use, reproduce, make enhancements to and print the Data, and combine it with other data held by the Licensee.
- 3.2 The Licence is limited to personal use of the Data or use within the Licensee's organisation only.
- 3.3 The Licensee shall not Commercialise the Data or any product or service derived from incorporating the Data without the prior written consent of the relevant Contributor(s).
- 3.4 The Licensor warrants that the grant of the Licence does not infringe the Intellectual Property rights of any person and that it is entitled to grant the licence in relation to the data of third party Contributors.
- 3.5 Data items identified in the Schedule as having been provided by individual Contributors are subject to the additional conditions (if any) set out in the Schedule. In the event of any conflict between the terms of the Licence Conditions and any additional condition set out in the Schedule, the terms of the Licence Conditions shall take precedence.

4 Intellectual Property Rights Reserved

- 4.1 All rights not expressly granted to the Licensee under Condition 3 are reserved.
- 4.2 The Licensee acknowledges that the Data is a special, unique and valuable product in which the copyright and other applicable Intellectual Property rights vest in the Contributors as listed in the Schedule.
- 4.3 The Contributors of items of Data retain ownership of that Data, whether in its original form or as modified by the Licensee and of the Intellectual Property rights therein.
- 4.4 Intellectual Property in any Enhancement to the Data vests, upon its creation, in the Contributor named in the Schedule in relation to the relevant item of Data.

5 Custody of the Data

- 5.1 The Licensee shall maintain the Data in safe custody.
- 5.2 The Licensee shall take all reasonable steps to ensure that any person given access to the Data is aware of these Conditions and uses the Data only in accordance with this Agreement.

6 Precautions

- 6.1 The Licensor and all contributors cannot guarantee that the data, including any third party data, is free from errors, and does not warrant the quality, performance or suitability of the data for any purpose.
- 6.2 The Licensee assumes responsibility for selection of the data to achieve any intended results, and for its use.
- 6.3 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.

7 Release and Indemnity

- 7.1 The Licensee:
 - A) Releases the Licensor, its officers, employees and agents and all contributors in respect of all liability for loss, damage or injury which may be suffered by the licensee or arising from the Licensee's use of the data; and
 - B) Indemnifies the Licensor, its officers, employees and agents and all contributors in respect of all liability for loss, damage or injury, which may be suffered by any person arising from that person's use of the data.
- 7.2 The release and indemnity provisions will survive the expiration or termination of the licence.

8 Retention of Notices

- 8.1 The Licensee shall not remove, obscure or interfere with any copyright notice, trademark, warning or disclaimer incorporated in the Data.

9 Commercial Exploitation

- 9.1 The Licensee shall not Commercialise the Data or any product or service derived from incorporating the Data without the prior written consent of the relevant Contributor(s).
- 9.2 A Contributor may grant or refuse consent in their absolute discretion and subject to any condition whatsoever, including payment of royalties.
- 9.3 Any of the Data or any product or service derived from incorporating the Data which is Commercialised in accordance with this clause, must be accompanied by or incorporate an appropriate acknowledgment of the Contributor as the source of the Data in the terms specified in the Schedule.

10 Termination

- 10.1 If the Licensee breaches any of these Conditions, the Licensor may end the Agreement immediately by notice in writing to the Licensee.

10.2 The termination of the Agreement under Condition 10.1 shall be without prejudice to the rights of either party accrued under the Agreement before termination.

10.3 The Licensee shall cease using the Data for any purpose from the date of termination of the Agreement and shall return the Data and any copies made of it to the Licensor within 30 days of the date of termination.

11 Entire Agreement

11.1 The Agreement supersedes all prior agreements and understandings between the parties relating to the Data and constitutes the entire agreement between the parties.

12 Variation

12.1 No addition to or modification of any provision of the Agreement shall be binding unless in writing signed by both parties.

13 Assignment

13.1 The rights granted under the Licence are restricted solely to the Licensee and may not be assigned, transferred or sub-licensed without the prior written consent of the Licensor.

13.2 The Licensor may grant or refuse consent in its absolute discretion and subject to any condition whatsoever.

14 Law

14.1 The Agreement shall be governed by and construed in accordance with the laws of the Licensor jurisdiction.

15 Waiver

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

16 Severance

16.1 Any reading down or severance of a particular provision does not affect the remaining provisions of the Agreement.

17 Application

17.1 Where the Licensee is an agency of the same jurisdiction as the Licensor, such that it is not permitted to enter into a binding legal agreement except as that jurisdiction, then the conditions shall be read as merely giving rise to an arrangement between the Licensor and the Licensee.

AUSTRALIAN SPATIAL DATA INFRASTRUCTURE

Australian Spatial Data Infrastructure (ASDI)

The Australian Spatial Data Infrastructure (ASDI) is a national initiative to provide better access to essential spatial data. The infrastructure provides the institutional and technical framework to ensure national consistency, content and coverage of data to meet common needs.

ANZLIC has developed a national spatial data infrastructure model that comprises four core components - institutional framework, technical standards, fundamental data, and distribution networks. The detailed description of the ASDI and its components can be found at: <http://www.anzlic.org.au/asdi/anzdiscu.htm>

ANZLIC – the Spatial Information Council

ANZLIC – the Spatial Information Council is the peak council for public sector spatial data management in Australia and New Zealand. Ten jurisdictions are represented within the ANZLIC family (8 Australian State & Territory governments, and the Australian and New Zealand governments). More details on ANZLIC – the Spatial Information Council can be found at: <http://www.anzlic.org.au/index.html>

Australian Spatial Data Directory (ASDD) and Metadata

The Australian Spatial Data Directory is the national directory of Australia's investment in spatial data. For each set of data, summary information or metadata available in the directory includes:

- A description of the data
- The location of the data
- Details of the data quality, including accuracy and currency
- How the data were developed (lineage)
- Who to contact to obtain access to the data
- Conditions of access

The directory is available over the Internet at: <http://www.auslig.gov.au/asdd/>. The ANZLIC metadata standard is at: <http://www.anzlic.org.au/asdi/metaelem.htm>

Custodianship

The principle of custodianship assigns to an agency certain rights and responsibilities for the collection of spatial information and the management of this on behalf of the community. The rights and responsibilities include the right to set marketing conditions for the information and responsibilities regarding the maintenance and quality of the information. It also ensures accessibility of the information and provides a recognised contact point for the distribution, transfer and sharing of the information. Custodians must take into account issues of privacy and security when providing access to data.

The ANZLIC Custodianship Policy can be found on-line at:
http://www.anzlic.org.au/policy/custodn/exec_sum.htm