

## DATA SHARING DEED FOR HISTORICAL SOIL DATA CAPTURE PAYMENTS PROGRAM – PARTICIPANT

**THIS DEED** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ between:

1. **[#Insert Data Broker name]** (ACN/ABN **[#Insert Data Broker ACN/ABN]**) located at **[#Insert Data Broker address]** (the **Data Broker**);

and

2. Name: **[#Insert Participant name]**

ABN: **[#Insert Participant ABN]**

ACN (if applicable): **[#Insert Participant ACN]**

Address: **[#Insert Participant address]**

(the **Participant**).

Reference Number: **[#Insert reference number]**

### INTRODUCTION

- A. The Australian Government is implementing the 'National Soil Strategy', a major Australian national policy on soil which aims to set out how Australia will value, manage and improve its soil for the next 20 years.
- B. The 'Historic Soil Data Capture Payments Program' (the **Program**) is an initiative funded through the 'National Soil Package'. The Program will enable eligible land managers (such as the Participant) to licence the historic soil data they own to the Data Broker (with a right of sub-licence to the Commonwealth and further sub-licensing by the Commonwealth).
- C. The historic soil data collected through the Program will increase understanding of Australia's historic soil condition temporally and spatially from improved access to historic privately owned data and contribute historic soil data to a national soil data repository.
- D. This Data Sharing Deed (**Deed**) sets out the terms on which the historic soil data owned by the Participant, and collected and shared through the Program, will be licenced to the Data Broker (with a right to sub-licence to the Commonwealth and further sub-licensing by the Commonwealth).

## IT IS AGREED

### 1 DEFINITIONS

**Commonwealth** means the Commonwealth of Australia, or a Commonwealth Entity, as appropriate.

**Commonwealth Entity** means any of the following Commonwealth entities:

- (a) a Minister;
- (b) a Department;
- (c) a body (whether incorporated or not) established or appointed for a public purpose by or under a Commonwealth law; and
- (d) a person holding or performing the duties of an office established by or under a Commonwealth law other than a person who is by virtue of holding that office a Secretary of a Department.

**Foreground IP** means all Intellectual Property which is created by the Data Broker and any Commonwealth Entity (including any Subcontractors) from Participant Data.

**Intellectual Property** means any intellectual property rights, whether registered or unregistered and includes copyright, designs, patents, trademarks, semi-conductor and circuit layout rights.

**Participant Data** means one or more historic soil datasets which:

- (a) the Participant owns, including all Intellectual Property Rights;
- (b) meets the Program's eligibility requirements; and
- (c) the Participant will licence to the Data Broker (with a right of sub-licence to the Commonwealth and further sub-licensing by the Commonwealth).

**Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth).

**Precluded Purpose** means any of the following:

- (a) detecting, investigating, prosecuting or punishing;
  - (i) an offence; or

- (ii) a contravention of a law punishable by a pecuniary penalty;

- (b) enforcing a law relating to the confiscation of proceeds of crime; or

- (c) preparing for, or conducting, proceedings before a court or tribunal or implementing a court/tribunal order.

**Subcontractor** means a person, business or other entity engaged by the Data Broker, the Commonwealth, or a Commonwealth Entity to provide services in respect of the collection, use and storage of the Participant Data.

**You and Your** means the Participant.

### 2 OPERATION

#### 2.1 Commencement

This Deed commences on the date it is signed by You.

#### 2.2 Participant's obligations

You agree:

- (a) to allow the Data Broker to collect your Personal Information on behalf of the Commonwealth for the purpose of administering the Program;
- (b) to the Commonwealth's collection, use and disclosure of georeferencing information in Participant Data for Commonwealth approved government and non-government purposes;
- (c) to complete any survey provided as part of any data collection conducted by a Data Broker;
- (d) that You will not terminate or vary this Deed; and
- (e) to abide by any payment cap the Commonwealth may apply to participants of the Program.

#### 2.3 Data Broker's obligations

The rights granted to the Data Broker under this Deed are subject to the Data Broker procuring that the Participant Data:

- (a) is shared by the Commonwealth in accordance with any Commonwealth data sharing laws.
- (b) is not linked by the Commonwealth in any publicly available database to the street address of the property to which the Participant's property which the Participant Data relates to; and
- (c) is not used by the Commonwealth for a Precluded Purpose unless the Participant agrees otherwise in writing.

### **3 INTELLECTUAL PROPERTY RIGHTS**

#### **3.1 Ownership and licensing of Intellectual Property**

- (a) This Deed is for the benefit of the Data Broker (including any Subcontractors and sub-licensees).
- (b) You grant to the Data Broker (including any Subcontractors) a permanent, irrevocable, royalty-free, licence fee-free, world-wide, non-exclusive licence (including a right of sub-licence to the Commonwealth including any Subcontractors and further sub-licensing by the Commonwealth) to collect, use, interrogate, reproduce, modify, adapt, publish, perform, broadcast, communicate, distribute, commercialise and exploit the Participant Data, including all Intellectual Property in that data, for any purpose other than a Precluded Purpose.
- (c) The Data Broker agrees to access and use the Participant Data in accordance with the licence granted by You under clause 3.1(b) and only for Commonwealth approved purposes in relation to the Program.
- (d) The Commonwealth is the custodian of the Participant Data, which may be held and made available by the Commonwealth in a national soil data repository.
- (e) Subject to clause 3.2, this Deed does not affect Your ownership of the Intellectual Property in the Participant Data.

- (f) For the avoidance of doubt, the licence You grant under clause 3.1(b) allows:
  - (i) the Participant Data to be used for any purposes connected to the Commonwealth's policies for valuing, managing and improving Australia's soil assets;
  - (ii) georeferencing information in Participant Data to be accessed and used for Commonwealth approved government and non-government purposes;
  - (iii) the Participant Data to be uploaded to a national soil data repository managed by a third party, including a Commonwealth Entity; and
  - (iv) the Participant Data to be combined with any third party data to form an aggregated database which can be made available by the Commonwealth to a third party through a sub-licence agreement.

#### **3.2 Commonwealth ownership of Foreground IP**

Ownership of all Foreground IP vests on its creation in the Commonwealth. By way of example, this includes any aggregated database created by the Commonwealth that includes the Participant Data and the data of any third parties.

### **4 ACKNOWLEDGEMENTS**

#### **4.1 Privacy**

- (a) Your Personal Information will be used, disclosed and secured to administer the Program in accordance with the *Privacy Act 1988* (Cth).
- (b) You acknowledge and agree that you have read and understand the privacy notice and cover letter provided to you in respect of the Program prior to execution of this Deed.

#### **4.2 Confidentiality**

Participant Data does not comprise confidential information and will not be treated as such.

#### **4.3 Warranties and liabilities**

- (a) You warrant that You:
  - (i) have the power and capacity to enter into this Deed; and
  - (ii) are the owner of the Participant Data.
- (b) If a third party brings a claim against the Data Broker or the Commonwealth (including any Subcontractors) or any other party granted a sub-licence in accordance with this Deed (**Affected Party**) for any infringement or alleged infringement of that third party's Intellectual Property rights in the Participant Data, You agree to indemnify the Affected Party in respect of any such claim.
- (c) Your liability to indemnify the Affected Party under clause 4.3(b) will be reduced proportionately to the extent that any act or omission by the Affected Party was the cause of, or contributed to, the third party claim.

### **5 GENERAL**

#### **5.1 No partnership, joint venture or other fiduciary relationship**

Nothing in this Deed constitutes a relationship between You and the Data Broker, or any party granted a sub-licence (including the Commonwealth) in accordance with this Deed, as agents, partners, joint venturers or any other fiduciary relationship.

#### **5.2 Applicable law**

- (a) This Deed is governed by and must be construed according to the laws of the Australian Capital Territory.
- (b) You submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

**EXECUTED as a DEED**

**SIGNED, SEALED AND DELIVERED** by  
[**#Insert Data Broker name**] ACN/ABN  
[**#Insert Data Broker ACN/ABN**] in  
accordance with the requirements of section  
127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/secretary (print)

**Option 1: Corporations Act Company**

Option 1 provides for execution by a company incorporated under the *Corporations Act*, in accordance with section 127 of the *Corporations Act*. This requires execution by two directors of the company, or a director and the company secretary.

**SIGNED, SEALED AND DELIVERED** by  
[**#Insert Participant name**] ACN/ABN [**#Insert  
Participant ACN/ABN**] in accordance with the  
requirements of section 127 of the  
*Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/secretary (print)

**Option 2: Natural Person**

Option 2 provides for execution by an individual, where the Participant is a natural person.

**SIGNED, SEALED AND DELIVERED** by  
[*#Insert Participant name of natural person*]  
in the presence of:

\_\_\_\_\_  
Signature of party

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of party (print)

\_\_\_\_\_  
Name of witness (print)

**Option 3: Trustee of a trust**

**Option 3 provides for execution by a company in their capacity as the trustee of a trust.**

**SIGNED, SEALED AND DELIVERED** by  
[*#Insert Participant name of company*]  
ACN/ABN [*#Insert Participant ACN/ABN*]  
both in its personal capacity and acting as  
trustee of the [*#Insert Participant name of  
the Trust*] in accordance with the  
requirements of section 127 of the  
*Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/secretary (print)

**Option 4: Partnership**

**Option 4 provides for execution by a partner in a partnership where they have the authority (through an Authorising Deed) to bind the partnership to this deed.**

**SIGNED, SEALED AND DELIVERED** for  
and on behalf of [*#Insert Participant name of  
partnership*] by a partner of that partnership  
under the authority of [*#Insert Participant  
name of authorising deed*] dated [*#Insert  
authorising deed date*] who has no notice of

revocation of that authority in the presence  
of:

\_\_\_\_\_  
Signature of partner

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of partner (print)

\_\_\_\_\_  
Name of witness (print)