**Notes accompanying Data Sharing Agreement Template:**

* This is an example Data Sharing Agreement template provided to assist Data Owners, Data Publishers and Data Uploaders in managing data licencing and data sharing rights in the case that shared ownership, intellectual property and/or commercial interests apply to the Datasets.
* Where Data Owners, Data Publishers and Data Publishers are not the same entity, then copies of this signed agreement should then be provided to Data Owners, Data Publishers and Data Uploaders and submitted to GeoReports with the Dataset when uploading to GeoReports.com.au.
* Definitions of the Terms used in this Agreement are provided in the body of the Data Sharing Agreement, below.
* Depending on the original Contract Terms agreed between Data Owner and Data Publisher and on the limitations, qualifications and copyright statements published with each original Dataset, the intellectual property, copyright, commercial and publishing rights may sit with one or both parties, and potentially other stakeholders such as managing agents. The intent of this Agreement Template is to provide non-exclusive data sharing and copyright licencing rights between the Data Owner and Data Publisher to facilitate the upload and dissemination of nominated Datasets according to Agreed Licencing Conditions.
* Users should replace [CAPITALISED] terms in this Agreement with relevant information specific to the parties involved. If multiple Data Owners or Data Publishers retain copyright interests, these parties should be identified in Section 1 and should sign this Data Sharing Agreement.
* This Data Sharing Agreement Template does not include consideration of commercial arrangements between Interested Parties or the Data Uploader. Royalties payable by Data Users in relation to downloaded data are payable to the Data Uploader according to the [GeoReports Pricing Framework](https://www.georeports.com.au/pricing-framework); it is necessary for Interested Parties to Agree Commercial Terms and distribution of royalties with eachother under a separate Agreement.
* By uploading Data to GeoReports.com.au, the Data Uploader accepts the GeoReports Pty Ltd Terms of Use which require that suitable copyright licencing or data sharing agreements are in place between Interested Parties and to facilitate re-publishing of Data, thereby releasing the Data Uploader from copyright infringement. In all cases, GeoReports Pty Ltd accepts no responsibility for, or liability arising from, copyright infringement for material uploaded by others for sharing through the GeoReports.com.au platform.
* Attachments to this Data Sharing Agreement include:
	+ Licence Statement (1 page summary of agreed licence conditions for each dataset). A one page statement must be included for each dataset covered by this data sharing agreement.
1. **Data Sharing Agreement**

Where Data Owners and Data Publishers are not the same entity, then copies of this signed Data Sharing agreement must be provided to GeoReports as part of the Dataset upload process. It is the responsibility of the uploading party (Data Uploader) to satisfy themselves that the legal and commercial rights of all relevant intellectual property, copyright, publishing and commercial stakeholders (Interested Parties) are satisfied under the terms of this agreement. Failure to do so may result in the Data Uploader being at risk of breaching copyright, legal and/or commercial obligations.

This Data Sharing Agreement is made on [AGREEMENT DATE] (the "Effective Date") between the following parties:

* The Data Owner: [PARTY A NAME], [PARTY A ADDRESS] ("[PARTY A ABBREVIATION]")
* The Data Publisher: [PARTY B NAME], [PARTY B ADDRESS] ("[PARTY B ABBREVIATION]")
* The Data Uploader: [PARTY C NAME], [PARTY C ADDRESS] ("[PARTY C ABBREVIATION]")
* [ADD OTHER INTERESTED PARTIES AS REQUIRED]

The Interested Parties agree as follows:

Once all Interested Parties sign this agreement and it is received by GeoReports, then it is a condition of this Agreement that Interested Parties release the Data Uploader from legal or commercial liability arising from the upload, download or re-use of Data.

By uploading Data to GeoReports.com.au, the Data Uploader accepts the GeoReports Pty Ltd Terms of Use which require that suitable copyright licencing or data sharing provisions are in place between Data Owners, Data Publishers and any other Interested Parties, thereby releasing the Data Uploader from legal or commercial liabilities. In all cases, GeoReports Pty Ltd accepts no responsibility for, or liability arising from, legal or commercial damages arising from upload, download or re-use of material uploaded to the GeoReports.com.au website.

* 1. **Purpose and Scope of Data Sharing.**

The parties are entering into this agreement for the Purpose of extending non-exclusive licencing rights to share, publish and re-use the nominated Dataset(s) defined in Attachment A. This Scope of this agreement extends to any Data or Datasets uploaded to GeoReports.com.au which may be shared, published and/or re-used by any party in accordance with the Terms of following Licence Agreement specified below (Tick relevant box):

|  |  |  |  |
| --- | --- | --- | --- |
| **Tick one Only** | **Licence Type** | **Category** | **GeoReports Licence Code / Description\*** |
|  | Assigned Copyright (This Agreement) | Closed- Private  | CP - Closed, Private (Copyrighted, available only to [PARTY B, C] employees , data locations **not** visible to public) |
|  | Assigned Copyright(This Agreement) | Closed- Visible | CR - Closed, Restricted (Copyrighted, available only to [PARTY B] employees, data locations are visible to, but not downloadable by the public) |
|  | CC-BY-NC-ND | Shared-Restricted | SR - Shared, Restricted (e.g. Creative Commons with sharing restrictions, Attribution, Non-commercial, No-Derivatives) |
|  | CC-BY-ND | Shared-Restricted | SR - Shared, Restricted (e.g. Creative Commons with sharing restrictions, Attribution, No-Derivatives) |
|  | CC-BY-NC-SA | Shared-Restricted | SR - Shared, Restricted (e.g. Creative Commons with sharing restrictions, Attribution, Non-commercial, Share alike) |
|  | CC-BY-NC | Shared-Restricted | SR - Shared, Restricted (e.g. Creative Commons with sharing restrictions, Attribution, Non-commercial) |
|  | CC-BY-SA | Open-Controlled | OC - Open, Controlled (e.g. Creative Commons with sharing rules, Attribution, Share alike) |
|  | CC BY 4.0 | Open-Controlled | OC - Open, Controlled (e.g. Creative Commons with sharing rules, Attribution, International Std) |
|  | CC-BY | Open-Controlled | OC - Open, Controlled (e.g. Creative Commons with sharing rules, Attribution) |
|  | CC0 | Open-Unrestricted | OU - Open, Unrestricted (e.g. Creative Commons Unrestricted, Public Domain). |
|  | Other Agreement | Other | Other Agreement (provide details below) |
| Document Reference, Date and Description of Other Data Sharing / Licence Agreement: |

\*- Refer to <http://creativecommons.org.au/learn/licences/> for more information

* 1. **Description of Data.**

The "Data" or “Datasets” subject to this Data Sharing Agreement include all data referred to in Attachment A.

* 1. **License Grant to Use Data.**

[PARTY A] hereby grants to [PARTY B] a limited, non-exclusive, non-transferable, and revocable license to access, copy, and use the Data in Attachment A.

1. **[PARTY B]'s Use of Data**
	1. **Purpose**

[PARTY B] shall use or disclose the Data only as permitted in the GeoReports Terms of Use or otherwise as permitted by Law.

* 1. **Standard of Care**

[PARTY B] shall exercise at least the same degree of care as it uses with its own data and Confidential Information, but in no event less than reasonable care, to protect the Data from misuse and unauthorised access or disclosure.

* 1. **Safeguards Around Data**

[PARTY B] shall use appropriate safeguards to protect the Data from misuse and unauthorised access or disclosure, including maintaining adequate physical controls and password protections for any server or system on which the Data is stored, ensuring that Data is not stored on any mobile device (for example, a laptop or smartphone) or transmitted electronically unless encrypted, and taking any other measures reasonably necessary to prevent any use or disclosure of the Data other than as allowed under this agreement.

* 1. **Personal Information**

[PARTY B] will not attempt to identify any Person whose information is contained in any Data or attempt to contact those Persons.

* 1. **Permitted Disclosure**

[PARTY B] may disclose the Data only

to the extent permissible under the GeoReports Terms of Use and Licence Agreement identified in Section 1.1 above, and to its officers, directors, employees, consultants, and representatives on a need-to-know basis.

* 1. **Required Disclosure.**

If [PARTY B] is compelled by Law to disclose any Data other than through the normal operations of GeoReports, [PARTY B] shall notify [PARTY A] before disclosing the compelled Data.

* 1. **Unauthorised Disclosure**

**Report**. Within [three] business days of [PARTY B] becoming aware of any unauthorised use or disclosure of the Data, [PARTY B] shall promptly report that unauthorised use or disclosure to [PARTY A].

**Cooperation and Mitigation**. [PARTY B] shall cooperate with any remediation that [PARTY A], in its discretion, determines is necessary to:

address any applicable reporting requirements, and

mitigate any effects of such unauthorized use or disclosure of the Data, including measures necessary to restore goodwill with stakeholders, including research subjects, collaborators, governmental authorities, and the public.

* 1. **Agents and Subcontractors.**

Except for permissible users under the Licence Agreement identified in Section 1.1 above, [PARTY B] shall ensure that any agents, including subcontractors, to whom it provides the Data agree to the same restrictions and conditions listed in this agreement.

* 1. **No Modification of Data.**

Unless authorised by [Party A] in advance and in writing, [PARTY B] shall not copy, decompile, modify, reverse engineer, or create derivative works out of any of the Data.

* 1. **Term.**

This agreement will commence on the Effective Date and continue as long as [PARTY B] or GeoReports retain the Data, unless terminated earlier (the "Term").

1. **Representations**
	1. **Mutual Representations**

**No Restriction**. Neither party is under any restriction or obligation that could affect its performance of its obligations under this agreement.

**No Violation, Breach, or Conflict**. Neither party's execution, delivery, and performance of this agreement and the other documents to which it is a party, and the consummation of the transactions contemplated in this agreement, do or will result in its violation or breach of any:

applicable Law or Order, or

except as agreed herein or under the GeoReports Terms of Use, require the consent of any Person, or conflict with, result in a violation or breach of, constitute a default under, or result in the acceleration of any material contract.

* 1. **[PARTY A]'s Representations**

**Ownership** [PARTY A] has the exclusive right to grant [PARTY A]'s use of the Data.

**No Prior Grant or Transfer**. [PARTY A] has not:

granted and is not obligated to grant any license to any third party that would conflict with any existing license grant, or

assigned or exclusively licensed, and is not obligated to assign or exclusively license, use of the Data to any third party that would conflict with this license grant.

* 1. **Data Uploader's Representations**

All Interested Parties signing this agreement agree to release the Data Uploader from any liabilities (legal or commercial) arising from the upload and subsequent download of this data through the GeoReports.com.au website.

1. **No Warranty**
	1. **Provided "As Is".**

The Data is provided "as is."

* 1. **No Warranty of Accuracy or Completeness.**

Neither party makes any warranty as to the accuracy or completeness of the Data.

1. **Confidentiality Obligations.**

The parties shall be bound by a non-disclosure agreement between the parties which requires that Data is not disclosed to anyone except Interested Parties, Data Uploader, GeoReports, and other authorised parties identified in the Licence Agreement agreed in Section 1.1 above.

1. **Royalties**

Royalties by GeoReports are paid to the nominated Interested Parties (below) within 14 days of sale. The total amount of royalties paid are:

* 15% of download sales for Basic Uploads and
* 30% of download sales for Advanced Uploads.

Provide here the agreed split of royalties payable on data sold through GeoReports (choices must add up to 100%).

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Party** | **% share of royalty payable\*** | **Bank Account Name** | **BSB** | **Account Number** |
| **Data Uploader** |  |  |  |  |
| **Data Publisher** |  |  |  |  |
| **Data Owner** |  |  |  |  |
| **Total** |  |  |  |  |

**\*- Total in this column must add up to 100%**

1. **Intellectual Property Ownership**

**No License to Existing Intellectual Property**. Except for any Intellectual Property rights associated with the Data, the parties hereby acknowledge that this agreement does not constitute a grant by either party to the other of any license or right to either party's Intellectual Property existing as of the Effective Date.

**Ownership of Developed Intellectual Property**. If either party develops any new Intellectual Property in connection with this, the parties shall enter into a separate definitive agreement regarding the ownership of that new Intellectual Property.

* 1. **Use of Name**

Except where incorporated in the original Data, neither party will use the other party's name, logos, trademarks, or other marks without that party's written consent.

1. **Termination**
	1. **Termination on Notice**

Either party may terminate this agreement for any reason on 10 Business Days’ notice to the other party.

* 1. **Termination for Material Breach.**

Each party may terminate this agreement with immediate effect by delivering notice of the termination to the other party, if

the other party fails to perform, has made or makes any inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations, and the failure, inaccuracy, or breach continues for a period of 10 Business Days' after the injured party delivers notice to the breaching party reasonably detailing the breach.

* 1. **Termination for Insolvency**

If either party becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation, the other party may terminate this agreement with immediate effect.

* 1. **Return or Destruction of Data and Property**

On the expiration or termination of this agreement, or on [PARTY A]'s request, [PARTY B] shall promptly

return the Data and any other property, information, and documents, including Confidential Information, provided by [PARTY A],

destroy all copies it made of Data and any other property, information, and documents, including Confidential Information, and

if requested by [PARTY A], deliver to [PARTY A] a certificate confirming [PARTY B]'s compliance with the return or destruction obligation under this section.

1. **Indemnification**
	1. **Mutual Indemnification.**

Notwithstanding that the GeoReports Terms of Use prevents malicious action from data users, each Interested Party (as an indemnifying party) shall indemnify the other (as an indemnified party) against any losses arising out of any proceeding which is:

brought by either a third party or an indemnified party, and

arising out of the indemnifying party's willful misconduct or gross negligence.

* 1. **Notice and Failure to Notify**

**Notice Requirement**. Before bringing a claim for indemnification, the indemnified party shall

notify the indemnifying party of the indemnifiable proceeding, and

deliver to the indemnifying party all legal pleadings and other documents reasonably necessary to indemnify or defend the indemnifiable proceeding.

**Failure to Notify**. If the indemnified party fails to notify the indemnifying party of the indemnifiable proceeding, the indemnifying will be relieved of its indemnification obligations to the extent it was prejudiced by the indemnified party's failure.

* 1. **Exclusive Remedy**

The parties' right to indemnification is the exclusive remedy available in connection with the indemnifiable proceedings described above.

1. **Definitions**

"Business Day" means a day other than a Saturday, a Sunday, or any other day on which the principal banks located in Sydney, NSW, Australia are not open for business.

“Data” and “Datasets” Data means digital information such as reports, borehole logs, test pits, Cone Penetration Tests, Wells or any recorded information which can be positioned in three dimensional space and also any related factual or interpretive commentary. "Data" may be grouped into site-specific or project-specific “Datasets”.

"Disclosure Schedule" means the schedules delivered, before the execution of this agreement, by each party to the other party which list, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision of this agreement or as an exception to one or more of the representations or warranties made by the party, or to one or more of the covenants of the party.

"Effective Date" is defined in the introduction to this agreement.

"Intellectual Property" means any and all of the following in any jurisdiction throughout the world (a) trademarks and service marks, including all applications and registrations, and the goodwill connected with the use of and symbolized by the foregoing, (b) copyrights, including all applications and registrations related to the foregoing, (c) trade secrets and confidential know-how, (d) patents and patent applications, (e) websites and internet domain name registrations, and (f) other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys' fees for past, present, and future infringement, and any other rights relating to any of the foregoing).

"Law" means

(a) any law (including the common law), statute, bylaw, rule, regulation, order, ordinance, treaty, decree, judgment, and

(b) any official directive, protocol, code, guideline, notice, approval, order, policy, or other requirement of any Governmental Authority having the force of law.

"Order"

"Person" includes

(a) any corporation, company, limited liability company, partnership, Governmental Authority, joint venture, fund, trust, association, syndicate, organization, or other entity or group of persons, whether incorporated or not, and

(b) any individual.

"Purpose" is defined in Section 1.1.

"Term" is defined in section Section 2.10.

1. **General Provisions**
	1. **Entire Agreement**

The parties intend that this agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this agreement and refer to this agreement,

represent the final expression of the parties' intent relating to the subject matter of this agreement,

contain all the terms the parties agreed to relating to the subject matter, and

replace all of the parties' previous discussions, understandings, and agreements relating to the subject matter of this agreement.

* 1. **Assignment**

Neither party may assign this agreement or any of their rights or obligations under this agreement without the other party's written consent.

* 1. **Notices**

**Method of Notice**. The parties shall give all notices and communications between the parties in writing by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid[, (iv) fax][, or (v) electronic mail] to the party's address specified in this agreement, or to the address that a party has notified to be that party's address for the purposes of this section.

**Receipt of Notice**. A notice given under this agreement will be effective on:

the other party's receipt of it, or

if mailed, the earlier of the other party's receipt of it and the [fifth] business day after mailing it.

* 1. **Governing Law**

This agreement shall be governed, construed, and enforced in accordance with the applicable State laws, without regard to its conflict of laws rules.

1. **Interpretation**
	1. **References to Specific Terms**

**Accounting Principles**. Unless otherwise specified, where the character or amount of any asset or liability, item of revenue, or expense is required to be determined, or any consolidation or other accounting computation is required to be made, that determination or calculation will be made in accordance with the generally accepted accounting principles defined by the professional accounting industry in effect in the United States ("GAAP").

**Currency**. Unless otherwise specified, all dollar amounts expressed in this agreement refer to American currency.

"**Including**." Where this agreement uses the word "including," it means "including without limitation," and where it uses the word "includes," it means "includes without limitation."

"**Knowledge**." Where any representation, warranty, or other statement in this agreement, or in any other document entered into or delivered under this agreement,] is expressed by a party to be "to its knowledge," or is otherwise expressed to be limited in scope to facts or matters known to the party or of which the party is aware, it means:

the then-current, actual knowledge of the directors and officers of that party, and

the knowledge that would or should have come to the attention of any of them had they investigated the facts related to that statement and made reasonable inquiries of other individuals reasonably likely to have knowledge of facts related to that statement.

**Statutes, etc**. Unless specified otherwise, any reference in this agreement to a statute includes the rules, regulations, and policies made under that statute and any provision that amends, supplements, supersedes, or replaces that statute or those rules or policies.

**Number and Gender**. Unless the context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders.

**Headings**. The headings used in this agreement and its division into sections, schedules, exhibits, appendices, and other subdivisions do not affect its interpretation.

**Internal References**. References in this agreement to sections and other subdivisions are to those parts of this agreement.

**Calculation of Time**. In this agreement, a period of days begins on the first day after the event that began the period and ends at 5:00 p.m. [TIME ZONE] Time on the last day of the period. If any period of time is to expire, or any action or event is to occur, on a day that is not a Business Day, the period expires, or the action or event is considered to occur, at 5:00 p.m. [TIME ZONE] Time on the next Business Day.

**Construction of Terms**. The parties have each participated in settling the terms of this agreement. Any rule of legal interpretation to the effect that any ambiguity is to be resolved against the drafting party will not apply in interpreting this agreement.

**Conflict of Terms**. If there is any inconsistency between the terms of this agreement and those in any schedule to this agreement or in any document entered into under this agreement, the terms of this agreement will prevail over and above the GeoReports Terms of Use. The parties shall take all necessary steps to conform with these respective Terms.

**Severability**. If any part of this agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.

* 1. **Waiver**

**Affirmative Waivers**. Neither party's failure or neglect to enforce any rights under this agreement will be deemed to be a waiver of that party's rights.

**Written Waivers**. A waiver or extension is only effective if it is in writing and signed by the party granting it.

**No General Waivers**. A party's failure or neglect to enforce any of its rights under this agreement will not be deemed to be a waiver of that or any other of its rights.

**No Course of Dealing**. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

**Third Party Beneficiaries**. Unless explicitly stated otherwise elsewhere in this agreement, no Person other than the parties themselves has any rights or remedies under this agreement.

This agreement has been signed by the parties.

[PARTY A NAME]

Name: [PARTY A SIGNATORY NAME]

Title: [PARTY A SIGNATORY TITLE]

Date:

[PARTY B NAME]

Name: [PARTY B SIGNATORY NAME]

Title: [PARTY B SIGNATORY TITLE]

Date:

ATTACHMENT A – DATASET DESCRIPTION AND LICENCE STATEMENT

(include one table per Dataset covered by this Data Sharing Agreement)

|  |
| --- |
| **Dataset Description and Licence Statement** |
| **Dataset Title** | *EXAMPLE:* “Queensland Geotechnical Database (Nov 2018)” |
| **Dataset Address** | *\*\*\* Provide a representative Dataset address or area of coverage\*\*\**  |
| **Dataset Reference** | *\*\*\* If available, provide a report or project reference number\*\*\**  |
| **Copyright Licence Type** | *EXAMPLE* “Open-Controlled (CC-BY)” – Refer to Section 1.1 or [here](https://www.georeports.com.au/copyright-guidelines/) for guidance |
| **Licence Statement (Copyright Notice, Limitation of Liability, Attribution)** | *EXAMPLE – PUBLICLY AVAILABLE DATASET:* “COPYRIGHT NOTICE This geotechnical log and its associated data (the Document) is licensed by the Queensland Department of Transport and Main Roads under the Creative Commons Attribution 4.0 Licence (CC BY 4.0). ATTRIBUTIONWhen reusing the Document, in whole or in part, please attribute the Department as follows: "(c) State of Queensland (Department of Transport and Main Roads) 2017, licensed under the CC BY 4.0 Licence". This licence does not apply to the Queensland Government logo or trademarks.LIMITATION OF LIABILITYThe CC BY 4.0 Licence contains a comprehensive Disclaimer of Warranties and Limitation of Liability. In addition, please note that this Document was prepared for Departmental use only. Reuse of the Document by anyone for any other purpose could result in error and/or loss. You should obtainprofessional advice before making decisions based on the contents of the Document. When reproducing any part of this Document, you must also reproduce this limitation of liability notice in addition to the italicised attribution statement above. Retrieved from the Queensland Geotechnical Database <http://qgd.org.au/>”*EXAMPLE – RESTRICTED / PRIVATELY HELD DATASET:*“Copyright of material in this Dataset is the property of XYZ Pty Ltd who used a degree of care, skill and diligence normally exercised by consulting engineers in similar circumstances and locality. No other warranty expressed or implied is made or intended. The Data Owner and Data Publisher are licenced to use any part of this report in accordance with the conditions of the Data Sharing Agreement signed by those parties” |
| **Year of Dataset** | *EXAMPLE* “2017” |
| **Data Owner** | *EXAMPLE* “Queensland Department of Transport and Main Roads” |
| **Data Publisher** | *EXAMPLE* “Queensland Department of Transport and Main Roads” |
| **Data Uploader** | *EXAMPLE* “XYZ Pty Ltd” *if known at time of completing this form* |