

Date / /



Birds Australia

Licence of the Atlas Database

**ROYAL AUSTRALASIAN ORNITHOLOGISTS UNION
(trading as BIRDS AUSTRALIA)**

and

THE PARTY NAMED AND DESCRIBED IN SCHEDULE 1

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BETWEEN

ROYAL AUSTRALASIAN ORNITHOLOGISTS UNION
(trading as BIRDS AUSTRALIA)
of Suite 2-5, 60 Leicester St, Carlton in the State of Victoria

(Birds Australia)

AND

The party named and described in Item 1 of the Schedule

(Licensee)

RECITALS

- A. Birds Australia owns copyright in the Atlas Database.
- B. Birds Australia has agreed to licence the Atlas Database to the Licensee on the terms and conditions contained in this Agreement.

THE PARTIES AGREE

The interpretation provisions of this document (including definitions) are in set out below. The schedules and any annexures form part of this document.

1. INTERPRETATION

1.1 Definitions

In this document unless expressed or implied to the contrary:

Atlas Database means the First Atlas and the Second Atlas.

Commencement Date means the date upon which this Deed is executed.

Fees means the fees set out, or calculated in accordance with the formula, in item 2 of the Schedule.

First Atlas means the database entitled the Atlas of Australian Birds, copyright in which is owned by Birds Australia, in whatever physical media it is presented and however arranged.

Intellectual Property Rights means:

1.1.1 inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methodologies, methods or techniques.

1.1.2 copyright (including future copyright) throughout the world in all literary works (including computer software compilations and databases), artistic

works, musical works, subject matter other than works, and any other works or subject matter in which copyright subsist or may in the future subsist and includes neighbouring rights.

- 1.1.3 confidential information and trade secrets.
- 1.1.4 trade marks (whether registered or unregistered).
- 1.1.5 rights under the Circuit Layouts Act 1989.
- 1.1.6 rights of renewal and extension of the rights in paragraphs 1.1.1 to 1.1.5.
- 1.1.7 Know-how,
- 1.1.8 and all other intangible or industrial property and all statutory and common law rights and remedies in relation thereto.

Permitted Use has the meaning ascribed in item 3 of the Schedule.

Second Atlas Database means the Database entitled the Birds Australia New Atlas of Australian Birds, copyright in which is owned by Birds Australia, in whatever physical media it is presented and however arranged.

Term means the period set out in item 4 of the Schedule.

Territory means the area set out in item 5 of the Schedule.

Updates means updates to the Atlas Database created pursuant to clause 5.2.

1.2 General Terms

In this document, unless the context requires otherwise:

- 1.2.1 a reference to any thing (including an amount or a provision of this document) is a reference to the whole and each part of it;
- 1.2.2 the singular includes the plural, and vice versa;
- 1.2.3 the word "person" includes an individual, a body corporate, a firm, an unincorporated body, a society, an association and an authority (including a Government Agency).

2. LICENCE OF THE ATLAS DATABASE

- 2.1 Birds Australia grants to the Licensee a non-exclusive, personal, non-transferable licence for the Term to use the Atlas Database for the Permitted Use in the Territory;
- 2.2 The Licence is restricted solely to the Licensee. Neither these rights, nor all or any part of the Atlas Database may be assigned, transferred or sublicensed.
- 2.3 The Licensee shall not have a right to grant sub-licences of the Atlas Database without the prior written consent of Birds Australia.

3. RESTRICTIONS ON THE LICENSEE

- 3.1 Other than as expressly provided in this Agreement, the Licensee shall not itself, and shall not permit any other party to:
- 3.1.1 download, sell, transmit, redistribute, reproduce, adapt or otherwise deal with the Atlas Database in any form or, in favour of third parties;
 - 3.1.2 reverse assemble or reverse compile the whole or any part of the Atlas Database;
 - 3.1.3 format or merge the whole or a substantial or material part of the Atlas Database;
 - 3.1.4 create data which is, the same as or similar to the whole or any material part of the Atlas Database.

4. FEES

In consideration of Birds Australia granting the Licence to the Licensee, the Licensee agrees to pay Birds Australia the Fees in the manner stated in item 2 of the Schedule.

5. TERM

- 5.1 This Agreement shall take effect upon the date of execution of this Agreement and shall continue for the Term.
- 5.2 Birds Australia may terminate this Agreement by notice to the Licensee:
- 5.2.1 if the Licensee breaches any term of this Agreement;
 - 5.2.2 if the Licensee becomes subject to any form of insolvency administration;
- 5.3 If this Agreement is terminated by Birds Australia, the Licensee shall immediately cease use of the Atlas Database.

6. FURTHER DEVELOPMENT BY BIRDS AUSTRALIA

- 6.1 Birds Australia acknowledges that, during the Term, it may continue active research and development works in relation to the Atlas Database.
- 6.2 If as a result of any of the work (if any) carried on pursuant to clause 6.1, Birds Australia produces any Updates it may notify the Licensee of the existence of such Update and the terms upon which it would be prepared to make such an Update available to the Licensee. If the Licensee accepts such Update on the terms proposed by Birds Australia, or such other terms as are agreed by the parties, then such Update shall be deemed to be part of the Atlas Database and subject to the licence granted by this Agreement.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Licensee acknowledges that all Intellectual Property Rights in the Atlas Database vest in Birds Australia.

- 7.2 By virtue of this Agreement, the Licensee acquires only the rights to use the Atlas Database during the Term and for the permitted use and does not acquire any rights of ownership in the Atlas Database or any part thereof.
- 7.3 The Licensee assigns all present and future Intellectual Property Rights in any modifications to the Atlas Database which are made or permitted to be made by the Licensee to Birds Australia.

8. DISCLAIMER AND RELEASE

- 8.1 The Licensee acknowledges that:
- 8.1.1 the Atlas Database is a combination of the work of many different people;
 - 8.1.2 the Atlas Database may contain material errors;
 - 8.1.3 the Atlas Database may become erroneous over time.
- The Licensee agrees that Birds Australia shall not be liable for any loss, damage or injury suffered by the Licensee or any other person consequent upon use or reliance on the Atlas Database.
- 8.2 Birds Australia is not liable to the Licensee or any third party for any claim brought about because of the modification, combination, operation or use of the Atlas Database with computer programs or data not furnished by Birds Australia.
- 8.3 The Licensee acknowledges that the Atlas Database has not been prepared to meet the requirements of the Licensee or of any other person and that it is therefore the responsibility of the Licensee to ensure that the Atlas Database meets its own individual requirements.
- 8.4 Except as expressly provided in this Agreement, no warranty, conditions, undertaking or term, whether express or implied, statutory or otherwise, as to the condition, quality, performance, merchantability or fitness for purpose of the Atlas Database is given or assumed by Birds Australia and all such warranties, conditions, undertakings and terms are hereby excluded.
- 8.5 Where any Act of Parliament implies any term into this Agreement, and that Act avoids or prohibits provisions in a contract excluding or modifying such term, that term shall be deemed to be included in this Agreement, but Birds Australia's liability for breach of that term shall be limited in one or more of the ways (at Birds Australia's option) permitted by section 68A(i) of the *Trade Practices Act 1974* (Cwlth).
- 8.6 The Licensee agrees that, subject only to clause 8.5, the liability of Birds Australia for all claims, in aggregate, which it may have against Birds Australia relevant to the Atlas Database (whether for breach of this Agreement, for negligence or otherwise) shall be limited to the Fees payable by the Licensee to Birds Australia during the first twelve months' duration of this Agreement.

9. LIMITATION OF LIABILITY

The Licensee agrees that, subject only to clause 8.5, in no event shall Birds Australia be liable for damages, including indirect, special, incidental or consequential damages

(including loss of existing or anticipated revenue) in connection with or arising out of use of the Atlas Database, or otherwise in connection with this Agreement, even if Birds Australia has been advised of the possibility of such damages.

10. SECURITY AND CONTROL

During the continuance of the Licence, the Licensee shall:

- 10.1 effect and maintain adequate security measures to safeguard the Atlas Database from access or use by any person not entitled by this Agreement to such access or use;
- 10.2 retain the Atlas Database and all copies of the Atlas Database under the Licensee's control;
- 10.3 maintain full and accurate records of the Licensee's use of and dealings with the Atlas Database and produce such records to Birds Australia on request;
- 10.4 indemnify and keep indemnified Birds Australia against any loss or damage of any kind which Birds Australia may sustain or incur as a result of any breach in security or control arising from a breach by the Licensee of this Agreement;
- 10.5 promptly report, to Birds Australia, any infringement or suspected infringement by a third party of the intellectual property rights of Birds Australia.

11. WARRANTIES BY BIRDS AUSTRALIA

Birds Australia warrants that to the best of its knowledge:

- 11.1 the exercise by the Licensee of any rights in the Atlas Database will not infringe the intellectual property rights of any third party; and
- 11.2 it is entitled and at all times during the Term shall be entitled to grant the rights herein granted to the Licensee.

12. WARRANTIES BY THE LICENSEE

The Licensee warrants that:

- 12.1 it has power to enter into this Agreement and perform the obligations contemplated in this Agreement;
- 12.2 it shall use its best endeavours to exploit the Atlas Database so as to maximise returns to Birds Australia;
- 12.3 it shall use the Atlas Database solely in respect of the Business within the Territory;
- 12.4 it shall not grant any right, licence or authority to any third party to use any of the Atlas Database except with the prior written consent of Birds Australia;
- 12.5 it shall not do any act or thing which would invalidate or put in dispute any of Birds Australia's title to any of the Atlas Database;

- 12.6 it shall not oppose any application for registration of any Intellectual Property Rights in relation to the Atlas Database; and
- 12.7 it shall not make any claim to ownership or entitlement to any part of the Atlas Database or make any application for registration of any Patent or Trademark included in the Atlas Database.

13. NOTICES

- 13.1 Any notice or other communication, including but not limited to, any request, demand, consent or approval, to or by a party must be in legible writing and forwarded by mail or facsimile to the address of the parties shown in this Agreement or such other address as is notified in writing to the other Party.
- 13.2 A facsimile transmission is regarded as legible unless the addressee telephones the sender within two (2) hours during Business Hours after transmission is received or regarded as received as herein provided and informs the sender that it is not legible.

14. PROPER LAW

This Agreement is governed by the laws of Australia, and may be enforced in the courts of Australia.

15. ENTIRE UNDERSTANDING

The parties agree that there are no conditions, warranties or other terms affecting the agreement between the parties, other than those embodied in this Agreement and that this Agreement contain the whole of the agreement between the parties.

16. WAIVER

Failure by a party to insist upon the performance of any one or more of the conditions of this Agreement shall not be deemed to be a waiver of any right and remedies that the relevant party may have and will not be deemed a waiver of any subsequent breach or default. No provision of this Agreement will be deemed to have been waived by a party unless such waiver is in writing signed by an officer of that party giving notice in that behalf.

17. FURTHER ASSURANCES

Each party must do all things and execute all further documents necessary to give effect to this Agreement.

18. METHOD OF AMENDMENT

A variation of any term of this Agreement must be in writing and signed by the parties.

19. ASSIGNMENT

Neither party shall assign, charge, offer for security or in any way deal with its rights and obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably refused.

20. SEVERABILITY

The invalidity or unenforceability of any one or more of the provisions hereof shall not invalidate or render unenforceable the remaining provisions of this Agreement. Any illegal or invalid provision of this Agreement shall be severable and all other provisions shall remain in full force and effect.

EXECUTED by the parties

EXECUTED by **ROYAL AUSTRALASIAN**)
ORNITHOLOGISTS UNION by being)
signed by:)
)
.....)
(Name))
who is duly authorised to execute the)
Agreement on its behalf in the presence of.)
Authorized Signature

.....
Witness

EXECUTED by **THE PARTY NAMED**)
AND DESCRIBED IN SCHEDULE 1 by)
being signed by:)
)
.....)
(Name))
who is duly authorised to execute the)
Agreement on its behalf in the presence of:)
Authorized Signature

.....
Witness

Schedule

1. **Name and Description of Licensee:**

2. **Fees payable by the Licensee and the manner of payment:**

3. **Permitted Use:**

4. **Term:**

5. **Territory:**