

# TERN Data Provider Deed

## BACKGROUND

*Australia's Terrestrial Ecosystem Research Network (TERN) is the national observatory for Australia's ecosystems that describes and monitors the condition of our land-based ecosystems and the vital processes within them. As an unincorporated consortium of many institutions, organisations and government agencies, TERN builds on significant past investments in ecosystem research by focussing on collating, calibrating, validating and standardising existing data sets. TERN is also building digital infrastructure to store and publish this information in a form that can be searched and accessed freely under licence that acknowledge the data provider(s) and build collaborative research. To achieve these goals, TERN promotes the free and open exchange of terrestrial ecosystem data to support science, policy making and public understanding. TERN respects the IP rights of data providers and encourages all data providers to license their data for unrestricted use where ever possible.*

## 1) THE LICENCE

- a) The Data Provider grants the TERN a non-exclusive, worldwide and free licence to:
  - i) Use the Data and Derivatives for the TERN data services including the facilitation of data management and data analysis via the TERN data eInfrastructure;
  - ii) Disseminate the Data and Derivatives through the TERN data Portal and services in accordance with the TERN terms and under the selected Data Provider terms specified in the Schedule. If the terms specified in the schedule is not feasible, please contact the TERN data services team ([esupport@tern.org.au](mailto:esupport@tern.org.au)) to discuss alternative terms in accordance to the open access policy of TERN.
- b) The Data Provider agrees that the TERN may share the Data and Derivatives with similar ecological and other research data access initiatives both nationally (e.g. AVH, OZCAM, ALA, ARDC RDA), internationally (e.g. EOL, GBIF, DataOne, NASA, Fluxnet) and collaborative projects (ANU-TERN Data Visualiser, Data Clouds etc.) so they may Use and Disseminate the Data and Derivatives subject to those initiatives agreeing to the Data Provider Terms and similar obligations as those on the TERN under this Deed.
- c) All information in the Public Domain will remain in the Public Domain. Neither the TERN nor Data Providers will seek to assert any IP rights over any Public Domain materials that are made available through the TERN data services.

## 2) DATA PROVIDER RIGHTS AND UNDERTAKINGS

- a) The Data Provider is free to make available, use or publish the Data elsewhere.
- b) The Data Provider warrants to the best of their knowledge and belief that they are the owner of the Data or that they have the necessary rights, licences or permissions to make the Data available in accordance with this Deed.
- c) The Data Provider will make reasonable efforts to ensure that the Data is accurate at the time of its collection or creation, and will provide updated versions of the Data whenever relevant and possible. The Data Provider will not be liable for any omissions or inaccuracies in the Data. If any inaccuracies or omissions are known to the Data Provider, it should be noted in the metadata.
- d) The Data Provider will provide a Contact to assist with liaison and queries with respect to the Data.
- e) Where the Data Provider requires a specific Attribution for the Data it will include that Attribution in the Schedule.

- f) The Data Provider will provide Metadata in support of their Data and within the standards promoted by TERN, so that any users of the Data are able to understand the source and applicability of the Data.
- g) The Data Provider will make the Data available to TERN in electronic format either by providing the appropriate file or making it accessible via the Internet.
- h) The Data Provider warrants to the best of its knowledge and belief that the Data does not contain any Restrictions such as confidentiality, privacy/personal information, sensitive data issues or other restrictions which affect the use of the Data as permitted under this Deed other than those notified to TERN in this Deed. If any Restrictions are notified, the TERN reserves the right to determine in its absolute discretion whether the Data should be included in the TERN Portal.
- i) The Data provider warrants to the best of their knowledge and belief that its supply of Data under this Deed does not contravene any relevant laws or obligations to others.
- j) The Data Provider may ask for regular reports from TERN about detailed metrics of data usage including number of downloads and people/institutions who downloaded data.

### **3) TERN RIGHTS AND UNDERTAKINGS**

- a) The TERN does not assert any intellectual property rights in the Data from external source that is made available through the TERN Portal, including where that Data is made available as part of a Derivative, where the Data Provider has provided the Derivative.
- b) Subject to clause 3(e), the TERN will make the Data or Derivative available via the TERN data Portal, TERN-ANU data visualiser in accordance with the terms of this Deed, the TERN Terms and the Data Provider Terms.
- c) If requested, and if the TERN agrees with the Data Provider that the TERN has the capability to provide such information, TERN will provide to the Data Provider, usage statistics on the use of the Data via the TERN Portal.
- d) The TERN will provide appropriate Attribution to the Data Provider as the source of the Data and will also indicate the Data Provider Terms attached to the relevant Data.
- e) The TERN reserves the right to include or remove Data and Derivatives from the TERN Portal as it sees fit.

### **4) LIMITATION OF LIABILITY**

- a) To the fullest extent permitted by applicable law, the TERN (including its employees and contractors) excludes all liability to any person for any consequences, including but not limited to all losses, damages (including indirect, special or consequential damages), costs, expenses and any other compensation, arising from this Deed, the use of the Data or, inability to access the TERN Portal.
- b) The TERN is not under any obligation to take legal or other action on behalf of the Data Provider or other rights holders in the event of the breach of any rights in the Data or the Data Provider Terms.

### **5) GENERAL**

- a) Either party may terminate this Deed:
  - i) at any time by giving not less than three (3) months notice to the other;
  - ii) with immediate effect if the other party has breached this Deed and that breach is not remedied within 30 days after written notice is received requiring rectification of that breach.
- b) The TERN may terminate this Deed immediately by notice in writing to the Data Provider in the event that the TERN ceases or intends to cease or is instructed to cease maintenance of the TERN data Portal.
- c) On termination of this Deed, or within 45 days of the request of the Data Provider, the TERN will remove the Data from the its Portal. TERN may retain a copy of the Data for record keeping and reporting purposes.
- d) Termination of this Deed does not operate to terminate any licences already granted to others under this Deed (including under clause 1(b)), the TERN Terms or the Data Provider Terms. Those licences continue notwithstanding termination. The TERN will not be responsible for notifying any third party or recovering any Data provided to others prior to the termination of this Deed.

## DEFINITIONS

**Attribution** means credit for a work to creator and/or organisation. An Attribution statement should include (where known) the name of the creator or source organisation (or both), the title of the work and the year of creation.

**Deed** means this deed, its terms and conditions, any schedules and attachments.

**Contact** means the individual or position nominated by the Data Provider in the Schedule to liaise with the Facility or data users on the Data.

**Data** means digitised data, metadata, records or information provided by the Data Provider for inclusion in the Facility Portal and includes (without limitation): species facts (morphology, taxonomy, behaviour, habitat), names lists, species interactions, occurrence data, identification keys, geospatial data, databases, multimedia – including images, video, sound files, raw data; including any intellectual property rights in that Data.

**Data Provider** means the individual or organisation set out in the Schedule and a party to this Deed.

**Data Custodian** means the individual or organisation responsible for safe storage and transport of data.

**Data Provider Terms** means the terms and conditions applied by the Data Provider on the use of the Data and selected in this Deed or described in the Schedule or attached to this Deed.

**Derivatives** means the work created from the reproduction, copying, modification, adaption and/or processing of the Data including into other formats e.g. electronic formats

**Disseminate** means the reproduction, publication, and communication to the public or other dissemination or making available to the public or data users of Data or Derivatives.

**TERN Portal** means the website with the URL **portal.tern.org.au** or any URL replacing it and associated web-services and internet publishing tools.

**TERN Terms** means the terms and conditions applied by the TERN on users of Data accessed through the web Portal.

**Metadata** means information about data, which identifies at least a number of metadata elements such as title, abstract, keywords, organisation/owner/creator, rights and Attribution.

**Public Domain** means not subject to copyright protection because copyright has expired or does not qualify for copyright (e.g. ideas or facts contained in a work, concepts, styles, facts, names, titles, slogans).

**Restrictions** mean any additional restrictions, encumbrances, or limitations notified by the Data Provider on the access or use of the Data and as notified in the Schedule. Examples of reasons for restrictions are:

Last modified 28/06/2018

- Sensitive data - *can it be reduced in precision, removed from the larger data set, or audiences restricted?* Note the Data Provider will be responsible for identifying, determining and managing restrictions and access to sensitive Data
- Confidential information - *should it even be provided to the Facility in the first place? Suggest provide Metadata only and a direct link to the Data Provider URL*
- Personal information - *can personally identifying data be removed or de-identified or consent obtained to disclose and use personal information? Suggest provide Metadata only and a direct link to the Data Provider URL*
- Other restrictions - *suggest provide Metadata only and a direct link to the Data Provider URL*

**Use** means

- a) access, reproduce, store, cache, manage, display and use the Data;
- b) reproduce, copy, modify, adapt and/or process the Data including into other formats e.g. electronic formats i.e., make Derivatives;
- c) incorporate all or part of the Data and Derivatives into larger data collations.