

## Data Licence Agreement

This Data Licence Agreement is entered into between:

<b>Project Proponent</b>	The Project Proponent identified on the Project Registration Form
<b>AfN</b>	Accounting for Nature Limited (ABN 25 629 446 493) of 3B Macquarie St, Sydney NSW 2000

The Project Proponent has completed a Project Registration Form to apply to register a proposed project with AfN under the Accounting for Nature Framework.

This Data Licence Agreement (**Agreement**) sets out the terms and conditions upon which:

1. AfN agrees to review the Project Proponent's proposed project to determine whether it is eligible for registration; and
2. the Project Proponent grants a licence to AfN to use the data and information it supplies to AfN in connection with the proposed project.

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### 1. Definitions and interpretation

#### Definitions

1.1 In this Agreement, unless the context requires another meaning:

<b>Accounting for Nature Framework</b>	means a system of rules and processes developed by AfN that ensure the integrity and transparency of Certified Environmental Accounts as summarised on the AfN website at <a href="http://www.accountingfornature.org">www.accountingfornature.org</a> .
<b>Business Day</b>	means a day that is not a Saturday, Sunday, a public holiday or bank holiday in Brisbane.
<b>Certified Environmental Account</b>	means an Environmental Account having been independently verified by a third-party and then certified by AfN which is the subject of a current Notice of Certification, that has not been terminated, revoked, or suspended.
<b>Confidential Information</b>	means, in relation to each party (for the purposes of this definition, the <b>Discloser</b> ):  (a) all information relating to or used by the Discloser or any of its Related Companies, including know-how, trade secrets, ideas, marketing strategies and operational information;  (b) all information concerning the business affairs (including products, services, customers and suppliers) or property of the Discloser or any of its Related Companies, including any business, property or transaction in which the Discloser or any of its Related Companies may be or may have been concerned or interested;  (c) any other information disclosed by or on behalf of the Discloser or any of its Related Companies which, by its nature or by the circumstances of its disclosure, is or

	<p>could reasonably be expected to be regarded as confidential; and</p> <p>including any such information made available by any third party, but excluding any information:</p> <ul style="list-style-type: none"> <li>(i) which is publicly known;</li> <li>(ii) which is disclosed to the other party without restriction by a third party and without any breach of confidentiality by the third party; or</li> <li>(iii) which is developed independently by the other party without reliance on any of the Discloser's Confidential Information.</li> </ul>
<b>Data Materials</b>	<p>means all data, information, documentation, photos, videos, maps and other materials of any nature provided by the Project Proponent to AfN in connection with the Project, or the relevant Environmental Account (including in connection with the certification, assessment, monitoring and independent audit or verification of the Environmental Account).</p> <p>Without limiting the foregoing, the Data Materials could include forms and documentation submitted by the Project Proponent along with accompanying data, papers, reports and other materials submitted in connection with the Project, or the relevant Environmental Account, including any such material submitted in response to a request by AfN. Such materials could, without limitation, include ecological data (biophysical information), traditional knowledge, analysis and research material, information about spatial boundaries, land ownership information and company details.</p>
<b>Environmental Account</b>	<p>means the compilation of consistent and comparable statistics and indicators for the specific purpose of describing the condition and trend of specific environmental assets as prescribed under the Standard.</p>
<b>Environmental Account Registry</b>	<p>means the AfN Environmental Account Registry which lists Environmental Accounts that have been registered, self-verified and / or certified by AfN.</p>
<b>Government Agency</b>	<p>means, whether foreign or domestic:</p> <ul style="list-style-type: none"> <li>(a) a government, whether federal, state, territorial or local or a department, office or minister of a government acting in that capacity; or</li> <li>(b) a commission, delegate, instrumentality, agency, board, or other government, semi-government, judicial, administrative, monetary or fiscal body, department, tribunal, entity or authority, whether statutory or not, and includes any self-regulatory organisation established under statute or any stock exchange.</li> </ul>
<b>Intellectual Property Rights</b>	<p>means all rights in any patent, copyright, database rights, registered design or other design right, utility model, trade mark (whether registered or not and including any rights in get up or trade dress), brand name, service mark, trade name, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not and wherever existing in the world, including all renewals,</p>

	extensions and revivals of, and all rights to apply for, any of the foregoing rights.
<b>Moral Rights</b>	Includes any rights subsisting under Part IX of the Copyright Act 1968 (Cth) as amended, including rights contemplated by Articles 6 <i>bis</i> and 14 <i>ter</i> of the Berne Convention and any rights under existing or future law in the nature of moral rights, wherever existing in the world.
<b>Notice of Certification</b>	means a notice of certification issued by AfN.
<b>Permitted Purposes</b>	has the meaning given in clause 3.2.
<b>Personal Information</b>	has the meaning given in the Privacy Act 1988 (Cth).
<b>Privacy Laws</b>	means all applicable legislation, regulations and other mandatory legislative instruments made or issued under such legislation in Australia which affect or regulate privacy, personal information or the handling of personal information including the Privacy Act 1988 (Cth), the Spam Act 2003 (Cth) and the Do Not Call Register Act 2006 (Cth).
<b>Project</b>	means the project identified in the Project Proponent's Project Registration Form.
<b>Project Registration Form</b>	means a Project Registration Form in the form provided by AfN for the purposes of applying to register an Environmental Account.
<b>Related Company</b>	means a related body corporate as defined in the Corporations Act 2001 (Cth).
<b>Self-verified Environmental Account</b>	Refers to an Environmental Account having been self-verified by the Proponent and reviewed by AfN Ltd which is the subject of a current notice of certification, that has not been terminated, revoked, or suspended.
<b>Standard Certification Standard</b> or	means the Accounting for Nature Certification Standard available on AfN's website at <a href="http://www.accountingfornature.org">www.accountingfornature.org</a> .
<b>Usage Restrictions</b>	has the meaning given in clause 3.2.

## Interpretation

### 1.2 In this Agreement:

- (a) unless the context otherwise requires, a reference to:
  - (i) the singular includes the plural and vice versa;
  - (ii) a gender includes all genders;
  - (iii) a document (including this Agreement) is a reference to that document (including any Schedules and Annexures) as amended, consolidated, supplemented, novated or replaced;
  - (iv) a party means a party to this Agreement;
  - (v) an item, recital, clause, schedule or annexure is to an item, recital, clause, schedule or annexure of or to this Agreement;

- (vi) a person (including a party) includes an individual, company, other body corporate, association, partnership, firm, joint venture, trust and Government Agency and the person's successors, permitted assigns, substitutes, executors and administrators;
  - (vii) a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;
  - (viii) proceedings includes litigation, arbitration and investigation;
  - (ix) time is to Brisbane time;
  - (x) day is to a day in Brisbane; and
  - (xi) the words "including" and "includes" mean "including, but not limited to", and "includes, without limitation" respectively;
- (b) headings are for convenience only and do not affect interpretation of this Agreement; and
- (c) if a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day.

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## **2. Registration**

- 2.1 On receipt of the Project Proponent's completed Project Registration Form and satisfaction of all requirements specified in that Project Registration Form, AfN agrees to:
- (i) undertake a preliminary review of the Project to determine whether it will be eligible for registration;
  - (ii) communicate any changes required prior to registration to the Project Proponent; and
  - (iii) if and when AfN determines that the Project is eligible for registration, officially record the Project on the Environmental Account Registry.
- 2.2 The parties acknowledge that:
- (a) after registration on the Environmental Account Registry, a Project will then proceed through additional steps under the Accounting for Nature Framework (eg whereby the Project Proponent collects data and undertakes various calculations, then submits relevant materials to AfN with a view to certification of the Environmental Accounts by AfN and then, if certified, subsequently maintains the Environmental Accounts and registration);
  - (b) other documentation and agreements are relevant to such additional steps;
  - (c) despite any other agreements entered into between them in the course of that process, this Agreement comes into force on the date the Project Proponent submits the Project Registration Form and will continue in full force and effect unless terminated in accordance with its terms.

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### 3. Licence

3.1 The Project Proponent grants to AfN a non-exclusive, royalty free, perpetual, transferable right and licence to access, process and use (including by copying, publishing or modifying) the Data Material for the Permitted Purposes, subject to the Usage Restrictions.

3.2 For the purposes of this clause:

(a) **Permitted Purposes** means:

- (i) for the purposes of the Standard including all activities anticipated by the Standard;
- (ii) to ensure the Project is compliant with the Standard and eligible to be registered on the Environmental Account Registry;
- (iii) for any purposes connected with the registration of the Project on the Environmental Account Registry, the certification of the Project by AfN or the ongoing maintenance of the Project on the Environmental Account Registry;
- (iv) for the purposes of uploading all Data Material required for inclusion in the Environmental Account Registry into the Environmental Account Registry and publishing related Data Material including:
  - (A) details about the Environmental Account including Project registration date, certification date, location and size, included assets, methods used, and confidence levels achieved;
  - (B) details about the scale of the Environmental Account, including details about the Project, property or region;
  - (C) details about the validation level achieved (i.e. certified or self-verified);
  - (D) Environmental Account summary graphs (including "Econd® Trend"), summary data tables and asset balance sheets;
  - (E) details about the purpose of the Environmental Account and any approved claims;
  - (F) the "Information Statement" download link for the Project;
  - (G) mandatory disclosures and limitations for the Environmental Account;
  - (H) the Project Proponent's "Statement of Compliance & Good Faith";
  - (I) information about what the Econd® does, and what it does not do;
  - (J) general information about the Project Proponent and the Project;
  - (K) the Project Proponent's "Environmental Account Summary", "Information Statement" and "Annual Compliance Reports"; and
  - (L) all other material required by the Standard,  
(together, **Public Material**) and making such material publicly available;
- (v) in connection with research undertaken by or on behalf of AfN;

- (vi) for commercial purposes (eg to provide services on a consultancy basis, or to government);
  - (vii) for promotional purposes; and
  - (viii) for public purposes.
- (b) **Usage Restrictions** means:
- (i) not publishing the following Data Material in any form that is available to the general public:
    - (A) the full and complete Environmental Account containing data tables and other raw indicator data, but subject always to AfN's rights to publish Public Material regarding the Environmental Account as set out in (a) above;
    - (B) personal information that is not material for the Permitted Purpose;
    - (C) other Data Material that AfN has agreed in writing with the Project Proponent not to publish (separately to this Agreement);
  - (ii) when using Data Material for the purposes described in clause 3.2(a)(v), (vi), (viii) or (a)(viii), AfN must:
    - (A) only publish Data Material in a form that ensures that any Data Material that is not Public Material (**Non-Public Material**) is reflected in an aggregated, de-identified manner only;
    - (B) not supply or disclose any Data Material to any third party in a way that could reasonably permit any person to identify that any Non-Public Material relates to the Project Proponent or the Project; and
    - (C) not publish or disclose any personal information included in Non-Public Material.
- 3.3 Except as provided by this Agreement including clause 3.4, AfN has no proprietary rights (including Intellectual Property Rights) or title to or interest in the Data Material and acknowledges that the Project Proponent or its licensors remain at all times the exclusive owner of the Data Material.
- 3.4 All proprietary rights (including Intellectual Property Rights) in any modifications, developments or alterations made by or on behalf of AfN to the Data Material, or new material derived from or created using the Data Material, will be owned by AfN.
- 3.5 The Project Proponent grants to AfN the right to sublicense any person to exercise the rights granted to AfN clause 3.1.
- 3.6 For all purposes of this Agreement, any exercise by any third party of the rights sublicensed to it in accordance with clause 3.5 will be deemed for all purposes of this Agreement to be an exercise of those rights by AfN and AfN must ensure that that exercise, if it had been made by AfN, would have been in accordance with the terms of this Agreement.
- 3.7 The Project Proponent grants to AfN the right to assign the rights granted to it under this clause to any person who acquires any relevant part of AfN's business.
- 3.8 The Project Proponent warrants that:

- (a) it owns or holds the necessary rights to grant the licence to the Data Materials granted in this clause; and
- (b) use of the Data Materials by AfN or its sub-licensees in accordance with this Agreement will not infringe the Intellectual Property Rights or other rights of any other person or result in the Project Proponent or any of its Related Companies breaching any obligation that it owes to any person.

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#### **4. Privacy**

- 4.1 AfN will hold any personal information contained in the Data Material in accordance with applicable Privacy Laws.
- 4.2 The Project Proponent warrants that it has taken all steps necessary to ensure that:
  - (a) it can disclose any personal information contained in the Data Material to AfN; and
  - (b) AfN can use such personal information as anticipated by this Agreement.

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#### **5. Confidentiality**

- 5.1 Except as permitted or required by this Agreement (including as permitted under the licence granted in clause 3), each party must not use or disclose to any other person the other party's Confidential Information.
- 5.2 Each party may only disclose or give access to the other party's Confidential Information to the extent necessary:
  - (a) when required to do so by law or any regulatory authority; or
  - (b) to such of its employees, officers, professional or financial advisers or service providers (together, **Personnel**) whose duties reasonably require such disclosure, on condition that each person to whom such disclosure is made is informed of the confidentiality of the information.
- 5.3 Each party must take steps no less rigorous than those which it takes in respect of its own Confidential Information to prevent any unauthorised use or disclosure of, or unauthorised access, loss or damage to, the Confidential Information of the other party.
- 5.4 If a party is required to disclose the other party's Confidential Information in accordance with clause 5.2(a), it must:
  - (a) give a notice to the other party of the requirement as soon as is reasonably possible;
  - (b) take all steps necessary to allow the other party to challenge or limit the requirement to disclose, using any available channel or in any forum (including a court of law);
  - (c) provide the other party with all assistance and co-operation reasonably requested by the other party to assist it to challenge or limit the requirement to disclose; and
  - (d) use its best endeavours to ensure that confidential treatment will be given to the Confidential Information by any person to whom it is required to be disclosed.
- 5.5 If either party becomes aware of a breach of this clause 5, including a breach of duty of its Personnel with respect to the other party's Confidential Information, it must:
  - (a) give a notice to the other party as soon as it becomes aware of the breach; and

- (b) promptly provide the other party with any information or assistance which it may reasonably request in order to minimise the loss or damage it may suffer as a result of the breach.

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## 6. Indemnity

- 6.1 Subject to the remainder of this clause 6, if any person makes any claim alleging that the Data Materials or AfN's use of them in accordance with any right granted to it under this Agreement infringes any Intellectual Property Right, Moral Right or any right of confidence or other right of any person, the Project Proponent must indemnify AfN, its related bodies corporate and their respective employees, officers and agents (together the **Indemnified Persons**) against all costs, claims, losses, demands and expenses (including all legal costs, fees and expenses) arising directly or indirectly out of the claim, subject to the following conditions:
  - (a) AfN must promptly notify the Project Proponent in writing of any such claim of which it has notice;
  - (b) AfN must not make any admissions in relation to the claim without the prior written consent of the Project Proponent;
  - (c) AfN must, at the Project Proponent's request and expense, allow the Project Proponent to conduct and settle (or control the conduct and settlement of) all negotiations and litigation resulting from the claim;
  - (d) at all times in relation to the claim, AfN must act in accordance with the reasonable instructions of the Project Proponent and, at the request of the Project Proponent, afford all reasonable assistance with all negotiations or litigation and must be reimbursed by the Project Proponent for any reasonable expenses incurred in so doing; and
  - (e) any legal costs awarded to AfN as a result of any litigation in relation to the claim are to be for the account of the Project Proponent and, if paid to AfN, must be paid by AfN to the Project Proponent promptly on receipt by AfN.
- 6.2 Each party acknowledges that, to the extent that the indemnity in clause 6.1 is in favour of Indemnified Persons other than the indemnified party, the indemnified party receives and holds the benefit of the indemnity on trust for and as agent of each of the Indemnified Persons.
- 6.3 If a payment due under this clause is subject to tax (whether by way of direct assessment or withholding at its source) the indemnifying party must pay the indemnified party such amounts as ensure that the net receipt, after tax, to the indemnified party in respect of the payment is the same as it would have been were the payment not subject to tax.

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## 7. Liability

- 7.1 In this clause 7 a reference to a claim means a claim made (whether in the form of an allegation, demand, suit, action or other proceeding of any kind) under or in connection with this Agreement or its subject matter, whether arising under contract (including under any indemnity), negligence or any other tort, under statute or otherwise at all.
- 7.2 To the full extent permitted by law, each party excludes all representations, warranties, terms and conditions, whether express or implied (and including those implied by statute, custom, law or otherwise), except as expressly set out in this Agreement.



- 7.3 To the full extent permitted by law, a party's cumulative liability to the other for all claims made by that other party will not exceed in aggregate \$500,000.
- 7.4 To the full extent permitted by law, a party will not be liable to the other party in respect of any claim for any loss of profit, data, goodwill or business, for any interruption to business, for any failure to realise anticipated savings or for any consequential, indirect, special, punitive or incidental damages.
- 7.5 Certain legislation, including the Australian Competition and Consumer Act 2010 (Cth) may imply warranties or conditions or impose obligations which cannot be excluded, restricted or modified except to a limited extent. This Agreement must be read subject to those statutory provisions.
- 7.6 The amount of one party's liability in respect of any claim made by the other party will be reduced by the extent, if any, to which the other party's negligence, breach of this Agreement, or breach of any law contributed to the loss or damage arising from the claim.
- 7.7 The limitations of liability in this clause 7 and the exclusions of liability in this clause 7 do not apply to any amounts recoverable under an indemnity in this Agreement, or any fees or charges payable in connection with this Agreement.
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## **8. Termination**

- 8.1 The Project Proponent may only terminate the data licence granted in clause 3 if AfN commits a material breach of the terms of this Agreement and such breach is not remediable or where such material breach is remediable, AfN fails to remedy the breach within 14 days of receiving written notice to do so.
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## **9. Notices**

### **Requirements**

- 9.1 All notices must be:
- (a) in writing and in English;
  - (b) addressed to the recipient at the address, fax number or email address set out below or to such other address, fax number or email address as that party may notify to the other party:  
  
**to Project Proponent:**  
  
via the contact details set out in the Project Registration Form  
  
**to AfN:**  
  
via the email [certification@accountingfornature.org](mailto:certification@accountingfornature.org)
  - (c) signed by or on behalf of the party giving the notice. If the notice is sent by email and does not contain a signature, it is deemed to be signed by the person identified as the sender of the email;
  - (d) sent to the recipient by hand, prepaid post (airmail if to or from a place outside Australia), fax or email; and

- (e) if sent by email, in a form which:
  - (i) identifies the sender; and
  - (ii) clearly indicates the subject matter of the notice in the subject heading of the email.

### **Receipt**

9.2 Without limiting any other means by which a party may prove that a notice has been received, a notice is deemed to be received:

- (a) if sent by hand, when left at the address of the recipient;
- (b) if sent by prepaid post, five Business Days (if posted within Australia to an address in Australia) or seven Business Days (if posted from one country to another) after the day of posting;
- (c) if sent by fax, at the time that the whole fax was sent as stated in a report generated by the sender's fax machine; or
- (d) if sent by email:
  - (i) at the time the email was delivered to the recipient's email server or the recipient read the email, as stated in an automated message received by the sender; or
  - (ii) one hour after the email was sent (as recorded on the device from which it was sent), unless within 24 hours of sending the email the sender receives an automated message that it was not delivered,

whichever is earlier,

but if a notice would otherwise be deemed to be received by a party on a day which is not a Business Day, or after 5.00 pm (local time at the receiving party's address) on a Business Day, the notice is deemed to be received by the party at 9.00 am (local time at its address) on the first Business Day after that day.

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## **10. General provisions**

### **Entire agreement**

10.1 This Agreement together with any other agreements or documents referred to in this Agreement or executed in connection with this Agreement is the entire agreement of the parties about the subject matter of this Agreement and supersedes all other representations, negotiations, arrangements, understandings or agreements and all other communications.

### **No partnership or agency**

10.2 The parties are independent and nothing in this Agreement constitutes either party as the trustee, fiduciary, agent, employee, partner or joint venturer of the other party.

### **Further assurances**

10.3 Each party must, at its own expense, whenever reasonably requested by the other party, promptly do or arrange for others to do, everything reasonably necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

## **Costs**

10.4 Each party must pay its own costs in respect of this Agreement and the documents and transactions contemplated by this Agreement.

## **No merger**

10.5 The warranties, other representations and promises by the parties in this Agreement are continuing and will not merge or be extinguished on completion of this Agreement.

## **Assignment**

10.6 Subject to clauses 3.5 and 3.7, a party must not assign or otherwise transfer, create any charge, trust or other interest in, or otherwise deal in any other way with any of its rights under this Agreement without the prior written consent of the other party.

## **Effect of termination**

10.7 If this Agreement is terminated then:

- (a) the parties are released from the obligation to continue to perform the Agreement except those obligations in clause 6 and any other obligations that, by their nature, survive termination; and
- (b) each party retains the rights and claims it has against any other party for any past breach of the Agreement.

## **Indemnities**

10.8 The indemnities in this Agreement are:

- (a) continuing obligations of the parties, separate and independent from their other obligations and survive the termination of this Agreement; and
- (b) absolute and unconditional and unaffected by anything that might have the effect of prejudicing, releasing, discharging or affecting in any other way the liability of the party giving the indemnity.

10.9 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Agreement.

## **Moratorium legislation**

10.10 To the extent permitted by law, a provision of a law is excluded if it does or may, directly or indirectly:

- (a) lessen or vary in any other way a party's obligations under this Agreement; or
- (b) delay, curtail or prevent or adversely affect in any other way the exercise by a party of any of its rights, remedies or powers under this Agreement.

## **Invalid or unenforceable provisions**

10.11 If a provision of this Agreement is invalid or unenforceable in a jurisdiction:

- (d) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (e) that fact does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions.

### **Waiver and exercise of rights**

10.12 A provision of or a right under this Agreement may not be waived or varied except in writing signed by the person to be bound.

### **Amendment**

10.13 This Agreement may be amended only by a document signed by all parties.

### **Rights cumulative**

10.14 The rights, remedies and powers of the parties under this Agreement are cumulative and do not exclude any other rights, remedies or powers.

### **Consents and approvals**

10.15 A party may give its approval or consent conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this Agreement expressly provides otherwise.

### **Successors and assigns**

10.16 This Agreement is binding on, and has effect for the benefit of, the parties and their respective successors and permitted assigns.

### **Governing law**

10.17 This Agreement is governed by the laws of Queensland.

### **Jurisdiction**

10.18 Each party irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland; and
- (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

### **Service of process**

10.19 Each party agrees that a document required to be served in proceedings about this Agreement may be served:

- (a) by being delivered to or left at its address for service of notices under clause 9; or
- (b) in any other way permitted by law.

**Approved: 4 May 2022**