

Data Licence Agreement

New Zealand Fire Service Commission (**the Licensor**) agrees to grant a licence to

Insert legal name

(**the Licensee**) to use the New Zealand Localities dataset subject to the terms set out below.

1) Definitions: In this Agreement:

“Agreement” means this data licence agreement between the Licensor and Licensee;

“Data” means data licensed to the Licensee under this Agreement, specifically the dataset known as New Zealand Localities, as more particularly described at www.fire.org.nz/data as updated from time to time;

“Documentation” means any user and technical documentation supplied by the Licensor with the Data to enable the use of the Data, including metadata;

“Intellectual Property Rights” includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trade marks, registered or unregistered designs, circuit layouts, databases, confidential information, know-how, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields anywhere in the world, together with all rights, interest or licence in or to any of the foregoing;

“Product” has the meaning given to the term in clause 8(d);

“Reproject” means to transform the Data to another mapping projection and or datum;

“Support” means support services, if any, to be provided by the Licensor under this Agreement, as specified in Schedule One; and

“Territorial Authorities Data” means any suburb data developed and owned by a Territorial Authority and provided to the Licensor for inclusion in the Data.

- 2) **Licence:** In consideration of the Licensee agreeing to the terms and conditions contained in this Agreement, the Licensor grants the Licensee a non-exclusive, non-transferable licence to use the Data, subject to the following terms and conditions.
 - 3) **Fees:** The Data is provided free of charge.
 - 4) **Versions to be supplied by the Licensor:** Where the Data is required to be updated, at the sole discretion of the Licensor, such updates will be available twice yearly at www.fire.org.nz/data. Updates will be available on 1 May and 1 December each year. If there is no scheduled update, a notice to this effect will be posted at the above web address not less than 30 days prior to the relevant scheduled release date.
 - 5) **Termination by the Licensor:** The Licensor may terminate this Agreement immediately by written notice to the Licensee if:
 - (a) the Licensee commits a material breach of this Agreement and, if that breach is capable of being rectified, the Licensee does not rectify that breach within 30 days; or
- a.15.1 a decision of any statutory or regulatory authority which is binding on the Licensor necessitates such termination; or
 - a.15.2 the Licensor ceases to maintain the Data,

provided that, where this Agreement is terminated pursuant to sub-clauses (b) or (c), the Licensee shall have the right to continue to use the Data for 6 months from the date of termination, subject to the restrictions contained in this Agreement.

- 6) **Termination by the Licensee:** The Licensee may terminate this Agreement at any time immediately on written notice to the Licensor. Following such termination the Licensee shall have no right to use the Data.
- 7) **Consequences of Termination:** If this Agreement is terminated under clauses 5(a) or 6, the Licensee will at the request of the Licensor, and in the manner reasonably specified by the Licensor, return the Data and Documentation to the Licensor, at no charge to the Licensor.
- 8) **Permitted use of the Data:** Subject to clause 9 and the other provisions of this Agreement, the Licensee may:
 - (a) Use the Data for its business purposes;
 - (b) Install the Data onto its business computer system. The Licensee may install more than one copy of the Data and there is no restriction as to the number of concurrent users of the Data;
 - (c) Distribute the current version of the Data to third parties, provided that those third parties have first entered into a data licence with the Licensor. For the avoidance of doubt, versions of the Data that have been superseded by the most recent update of the Data are not to be distributed by the Licensee to any third party. Data distributed by the Licensee must contain all copyright notices, metadata and any other notices that appear with the current version of the Data from time to time as it appears at www.fire.org.nz/data.
 - (d) Incorporate the Data into databases, maps and other products ("**Products**"). If the Data is incorporated into a Product in such a way that the Data can be readily extracted from the Product, the Licensee may only distribute the Product to third parties if those third parties have first entered into a data licence with the Licensor. If the Data is incorporated into a Product in such a way that the Data cannot be readily extracted from the Product then the Licensee may distribute the Product to third parties without such parties being required to enter into a data licence with the Licensor.
 - (e) Reproject the Data to another datum and or projection.
 - (f) Provide the Data to (or allow the provision of the Data to, or access to the Data by) any agents or sub-contractors of the Licensee, provided that the prior written consent of the Licensor is first obtained or the agent or sub-contractor enters into a data licence with the Licensor.
 - (g) Make a reasonable number of back-up copies of the Data for security purposes. The Licensee may only use such back-up copies for archive retention, system failure retrieval and disaster recovery purposes, and only during the term of the Agreement.
- 9) **Restrictions on use of the Data:** In relation to the Data, the Licensee may not:
 - (a) Modify the Data. For the avoidance of doubt, this means that the vector data, names or SUFIs (Static or Stable Unique Feature Identifier) in the Data may not be changed or altered in any way, except that changes to the format of text and reprojection of the Data are allowed.
 - (b) Reverse engineer, disassemble or decompose or build a like or similar product.
 - (c) Sell, lease or otherwise provide or distribute the Data for commercial gain to third parties. For the avoidance of doubt, the Data may be distributed free of charge to third parties in accordance with clause 8.
- 10) **Updates:** Within 6 months of the release by the Licensor of an updated version of the Data the Licensee must cease using any previous version of the Data and commence use of the updated Data
- 11) **Support:** The Licensee may submit to the Licensor proposed changes to the Data. The Licensor will

consider each change request and may change the Data at its discretion and timeframe without further reference to the Licensee. Technical documentation on change requests is available at www.fire.org.nz/data.

12) Additional Terms:

- (a) The Licensee agrees that the Data and the Documentation and all Intellectual Property Rights and other rights in the Data and the Documentation as amended from time to time remain the property of the Licensor and contributing Territorial Authorities and their licensors (as the case may be).
- (b) The Licensee must not remove or tamper with any copyright notice attached to or used in relation to Data.
- (c) The Licensee must not make any statement or claim relating to the Data being approved, recommended or endorsed by the Licensor or do anything similar or imply that such is the case, unless the Licensor has expressly given its prior written consent to the form and content of such claim. For the avoidance of doubt entering into this Agreement does not constitute such consent.
- (d) The Licensee must comply with the requirements of the Privacy Act 1993 and any other applicable law or regulations relevant to its collection, possession, licensing or use of the Data.
- (e) The Licensee must ensure that its personnel, agents and subcontractors comply with the above terms as if they were the Licensee.
- (f) The Licensee acknowledges that the Licensor has made no warranty that the Data will be free from errors, omissions, inaccuracies, viruses or other destructive code, or that the Data will be fit for the Licensee's purpose or for use in any specific technical environment.
- (g) The Licensee agrees and represents that it is acquiring the Data and any Documentation for the purposes of a business and that the Consumer Guarantees Act 1993 (New Zealand) does not apply.
- (h) The Licensee agrees to indemnify the Licensor and keep the Licensor indemnified against any claim, proceeding, damage, liability, loss, cost or expense (including legal costs on a solicitor and client basis), whether arising in contract, tort (including for negligence) or otherwise, arising out of or in connection with any breach by the Licensee
- (i) When promoting or marketing any product or service of the Licensee which requires the use of any Data, the Licensee must:
 - i. not knowingly make any misrepresentations or misstatements about the Data or the Licensor;
 - ii. not knowingly do anything that adversely reflects on, detracts from or otherwise prejudices the reputation or standing of the Licensor, the Data, or any products or services of the Licensor; and
 - iii. comply with the reasonable directions of the Licensor;
- (j) The Licensee acknowledges that Territorial Authorities, Land Information New Zealand ("LINZ") and the Crown hold certain material which has been licensed to the Licensor and incorporated into the Data. The Licensee further acknowledges that any Territorial Authority, LINZ and the Crown shall not, in any circumstances, be liable for any loss or damage (even if the Territorial Authority, LINZ or the Crown has been advised of the possibility of such loss or damage, and including, without limitation, any direct loss, indirect loss, consequential loss, loss of profits, business interruption loss or loss of data) suffered by the Licensee in connection with this Agreement. In the event that any exclusion of the liability of the Territorial Authority, LINZ or the Crown set out in this clause is inapplicable, or is held unenforceable, the liability of each of the Territorial Authority, LINZ and the Crown under or in connection with this Agreement, or arising out of any use, reproduction, modification, or creation of compilations or derivative works of or from the Data by the Licensee, whether that liability arises in tort (including negligence), equity or any other basis, shall be limited

to the fees paid by the Licensor for the material incorporated in the Data which gave rise to the loss or damage, exclusive of GST. For the purposes of the Contracts (Privity) Act 1982, this clause confers a benefit on, and is enforceable by, the Territorial Authority, LINZ and the Crown.

13) Notices: Each notice or other communication under this Agreement must be in writing and be made by email, facsimile, personal delivery or by post to the addressee at the facsimile number or address, and be marked to the attention of the personal office holder (if any) from time to time designated for the purposes of this Agreement by the addressee to the other party. The initial facsimile number, address and relevant person or office holder for each party is set out below. No communication shall be effective until received. The communication is deemed to be received by the addressee

- a) in the case of an email or facsimile, on receipt of transmission on the business day on which it is dispatched or, if it is dispatched after 5pm (in the place of receipt) on a business day or on a non-business day, on the next business day after the date of dispatch;
- b) in the case of personal delivery, when delivered; and
- c) in the case of a letter, on the third business day after posting by "fast post".

Licensor's notice details

Manager Data and Spatial Applications
New Zealand Fire Service
Level 9
AXA Centre
80 The Terrace
Wellington New Zealand

PO Box 2133
Wellington

Fax; +64 4 496 3731
Email: data.change@fire.org.nz

Licensee's notice details

[insert details]

14) Assignment: The Licensor is entitled to assign or novate its rights and obligations under this Agreement to any entity which:

- a) maintains or will maintain the Data (or any product which supersedes or replaces the Data) in succession to or replacement of the Licensor; and
- b) distributes or will distribute the Data (or any product which supersedes or replaces the Data) on behalf of the Crown as Crown Copyright.

15) General:

- a) Neither party is deemed to have waived any right under this Agreement unless the waiver is in writing. A failure to exercise or delay in exercising any right under this Agreement will not operate as a waiver of that right. Any such waiver will not constitute a waiver of any subsequent or continuing right or of any other provision in this Agreement.
- b) This Agreement is governed by New Zealand law and the courts of New Zealand shall have non-exclusive jurisdiction in any proceeding relating to this Agreement.

- c) Any modification to or variation of this Agreement must be in writing and signed by the parties.