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## CLICKWRAP Licence Agreement for

### PSMA Distribution Pty Limited Data Products

#### INTRODUCTION

This is a legal agreement between You, the End User and Licensee, and PSMA Distribution Pty Limited (**PSMA Distribution**) regarding the use of the PSMA data as provided via OMNILINK Pty Limited (**OMNILINK**). **OMNILINK** have entered into a licence agreement with **PSMA Distribution** and is the appointed full access Value Added Reseller (VAR) of **PSMA Distribution** and is required under its agreement with **PSMA Distribution** to ensure adherence to data usage and licence requirements.

PSMA Data includes all programs, data and printed and electronic documentation.

By installing, copying or otherwise using any part of the PSMA Data as provided by **OMNILINK**, You agree to be bound by the terms of this licence. If You do not agree with the terms of the Licence you must not install, use or copy the PSMA data in any way.

This licence does not permit You to create or commercially exploit any Developed Materials.

#### 1. GRANT OF STANDARD LICENCE

1.1 **OMNILINK** as a full Access Value Added Reseller(VAR) of **PSMA Distribution**, agrees to grant to the Licensee a non-exclusive, non-transferable right to use PSMA Data or **OMNILINK** based PSMA Products for the restricted term (Licence Term)

1.2 The Licence Term must not exceed the term.

1.3 Any rights not specially listed in this Licence are reserved by PSMA Distribution and must not be granted by the Licensee.

1.4 OMNILINK may allow the Licensee and its Users to use the PSMA Data for the Licensee's Internal Use only.

1.5 The Licensee must ensure that the Licensee and its Users are not permitted to:

- (1) sell, assign, transfer or sublicense the PSMA Data;
- (2) grant anyone (including any Related Body Corporate) access to PSMA Data, other than its Users;
- (3) create a commercial product or service from PSMA Data;
- (4) copy, alter, modify or reproduce, the PSMA Data;
- (5) reverse engineer, disassemble or decompile or directly or indirectly allow or cause a third party to reverse engineer, disassemble or decompile the whole or any part of the PSMA Data;
- (6) display or distribute (whether for consideration or not) PSMA Data including, for example, address details, spatial coordinates or vector format data over an open electronic network (including the internet); or
- (7) use or deal with the PSMA Data in any way that is likely to adversely affect intellectual Property Rights or **PSMA Distribution's** reputation.

1.6 The VAR must ensure that the Licensee is required to comply with any special conditions applicable.

1.7 The Licensee is required to, at no charge, provide **OMNILINK** and or **PSMA Distribution** with suggestions to correct any errors detected in the PSMA Data.

## **2. PROTECTION OF PSMA DATA – SECURITY**

2.1 The Licensee must ensure that while the PSMA Data is in the possession of or in the control of the Licensee, to maintain proper and secure storage for the PSMA Data and take all reasonable steps to protect the PSMA Data at all times from misuse, damage or destruction.

## **3. PROTECTION OF PSMA DATA – LABELLING AND NOTICES**

3.1 The Licensee must ensure that any copy or expression, including in material form, of the PSMA Data made pursuant to the Standard Licence (including a copy of the PSMA Data provided to a Contractor) is required to retain the copyright notice of PSMA thumbprint that is present on the PSMA Data at the time the data is provided to the Licensee.

3.2 The Licensee is required to comply with any reasonable directions of the VAR or PSMA regarding the form and content of any copyright notice, PSMA thumbprint and /or disclaimer that is to appear on PSMA Data.

## **4. INTELLECTUAL PROPERTY RIGHTS**

4.1 The Licensee must acknowledge that:

- (1) there is no transfer to the Licensee of title in or ownership of PSMA Data or any copies, updates, new releases, modifications and alterations (including by way of Thinning or manipulation), of the PSMA Data; and
- (2) any new intellectual Property Rights in PSMA Data created by the Licensee or for the benefit of the Licensee are assigned immediately upon creation to PSMA.

## **5. ASSISTANCE**

5.1. The Licensee is required to render all reasonable assistance to **PSMA Distribution** in relation to any actual, suspected or anticipated infringement of Intellectual Property Rights in the PSMA Data.

## **6. CONFIDENTIALITY**

6.1 Subject to clause 7.2, the Licensee is required to:

- (1) take all reasonable steps to maintain and safeguard Confidential Information; and
- (2) only disclose Confidential Information to its Users who need access to the Confidential Information for the purpose of exercising the Licensee's right to use and ensure that its Users maintain the confidentiality of the information referred to in this clause 7.1.

6.2 This obligation does not apply to:

- (1) information which is publicly available; or
- (2) is required to be disclosed by law.

## **7. PRIVACY**

7.1 The Licensee is required:

- (1) not to do any act or engage in any practice using the PSMA Data that would breach the Privacy Act 1988 (Cth); and

- (2) to comply with any direction of the VAR and PSMA Distribution observe any recommendation of the Privacy Commissioner relating to the Licensee's acts or practices that the Privacy Commissioner considers to be in breach of the obligations.

## 8. UPDATES AND NEW RELEASES

- 8.1 Where an update or new release of PSMA Data is provided to the Licensee, the Standard Licence will continue to apply in all respects to the update or new release which will be deemed to be the PSMA Data for the purpose of the Standard Licence.

## 9. IMPLIED TERMS

- 9.1 The Licensee must acknowledge that in respect to the PSMA Data:

- (1) PSMA and **PSMA Distribution** excluded all statutory or implied conditions and warranties to the extent permitted by law, including in respect of the state, quality or condition of the PSMA Data; and
- (2) to the extent permitted by law, liability under any condition or warranty which cannot legally be excluded is limited the supply of equivalent property or the replacement by PSMA or **PSMA Distribution** of the PSMA Data.
- (3) the Licensee does not rely and that it is unreasonable for the Licensee to rely on the skill or judgment of **PSMA Distribution** or PSMA as to whether the PSMA Data is reasonably fit for any purpose for which it is being licensed.
- (4) **PSMA Distribution** and PSMA, have no liability (including liability in negligence) to the Licensee for any loss or damage, consequential or otherwise, suffered or incurred by the Licensee cause by or resulting directly or indirectly from any failure, defect or deficiency of any kind in the PSMA Data and/or advice, recommendation, information or services provided to the Licensee.

## 10. THE LICENSEE'S WARRANTIES

- 10.1 The Licensee warrants to the VAR that the Licensee has not relied on any representation made by PSMA or **PSMA Distribution** which have not been stated expressly in written form including in any catalogues or publicity material produced by PSMA or **PSMA Distribution**.

## 11. INDEMNITY

- 11.1. The Licensee indemnifies and hold harmless, **PSMA Distribution**, and their officers, employees and agents ("those indemnified"), from and against any damages, loss (including expenses) or liability incurred or suffered by any of those indemnified arising from:

- (1) any claim from a third part alleging infringement of the Intellectual Property Rights and which arises from use of the PSMA Data in a manner or for a purpose not reasonably contemplated or not authorised by the Licensor under the Standard Licence;
- (2) a breach of the Licensee's obligations under the Standard Licence; or
- (3) any willful, unlawful or negligent act or omission by the Licensee;

## 12. CHANGES TO LEGISLATION

- 12.1 Notwithstanding any other provision of the Standard Licence, the Licensee must acknowledge and agree to comply with any future legislation and/or Government policy which imposes binding restrictions or limitations on the use of the PSMA Data, including restrictions or limitations relating to the supply of PSMA Data or elements thereof to any person, and the terms of its Standard Licence will be varied accordingly.

### 13. AUDIT

13.1. On the provision of at least ten (10) Business Days notice to the Licensee, the VAR will be entitled itself, or through its representatives, to audit the Licensee's books, records and systems for the sole purpose of confirming the Licensee's compliance with the Licensee's obligations under the Standard Licence. Any such audit will be conducted during normal business hours.

### 14. TERMINATION

14.1 The Standard Licence will terminate immediately by notice to the Licensee if:

- (1) the VAR's licence terminates;
- (2) **PSMA Distribution** gives written notice to the VAR in accordance with the VAR's licence, for the VAR to terminate a Standard Licence;
- (3) The Licensee is in breach of any term of the Standard Licence (or as required under this Agreement) and such breach is not remedied within twenty (20) Business Days of notifying the Licensee, or such period otherwise agreed by **PSMA Distribution**;
- (4) The Licensee ceases or threatens to cease conducting the Licensee's business in the normal manner, unless otherwise agreed to by **PSMA Distribution**.

14.2 If the Standard Licence is terminated otherwise than in accordance with clauses 14.1(2), 14.1(3) or 14.1(4), **PSMA Distribution** may allow the Licensee to continue to use the PSMA Data without data updates, for a period of up to:

- (1) the date of expiry of its Standard Licence; or
- (2) 12 months after the date of expiry or termination of the VAR's licence,

14.3 The Licensee is required to do all that is possible to mitigate the Licensee's losses arising from the termination of the Agreement.

### 15. RENEWAL OF LICENCE

15.1 The Licensee may renew a Standard Licence for subsequent terms, however, the Licence Term must not in any event exceed the Term.

### 16. DISPUTES

16.1 The Licensee must not include any dispute mechanisms which would prevent **PSMA** or **PSMA Distribution** from asserting its rights in accordance with the Licence or from seeking urgent equitable relief before an appropriate court.