

Nevada Natural Heritage Program

Department of Conservation and Natural Resources
901 South Stewart Street, Suite 5002 • Carson City, Nevada 89701-5245
voice: (775) 684-2900 • fax: (775) 684-2909

DIGITAL DATA LICENSE AGREEMENT

DIGITAL DATA LICENSE AGREEMENT (“Agreement”) dated _____

Month DD, YYYY

between **STATE OF NEVADA, NATURAL HERITAGE PROGRAM**, (“NNHP” or “Licensor”) and

Name (“Licensee” or “requestor”)

Each requestor who accepts or uses data (“the data set”) provided by NNHP under this Agreement agrees to all of the following provisions:

OWNERSHIP NOT GRANTED: Ownership of the data set remains exclusively with NNHP, NatureServe Inc., and/or those who provided the data to NNHP or NatureServe (“owners”).

DATA SET PROPRIETARY: The data set, and the analytic tools and processes from which it is derived, remain the privileged, confidential property of the owners. The data set shall be treated as proprietary in all respects, and requestor shall implement all procedures reasonably necessary to protect owners’ proprietary rights.

DATA LICENSE GRANTED: Subject to all the terms of this Agreement, NNHP grants to requestor a limited, non-exclusive, non-transferable right of access to the data set (“data license”), for the sole internal use of the requestor and for a period not to exceed one year from the date NNHP supplied the data set.

DATA LICENSE LIMITED: The data set shall not be duplicated for, sold to, provided to, or otherwise allowed to be available to any person or organization, other than the requestor, by any means electronic, written, verbal, or otherwise, without the consent of NNHP. Any and all requests for data access from third parties shall be directed to NNHP.

SUBCONTRACTORS MUST SIGN SEPARATE AGREEMENT: Any subcontractors of requestor who require access to the data set for the same project and purpose must license a separate copy of the data set and sign a separate copy of this Agreement.

DATA ACCESS LIMITED: If requested on behalf of an organization, requestor shall ensure that internal access to the data set is limited to those individuals with a legitimate need to access the data for the stated project and purpose. Requestor is responsible for transmitting the terms of this Agreement to the aforementioned individuals. If the data set is requested for an individual's use, data access shall be limited to that individual.

LICENSE FEE DUE: Requestor agrees to abide by the separate NNHP fee schedule and payment policy incorporated here by reference, unless a separate data exchange agreement is in place between NNHP and requestor. Fees are payable upon receipt of invoice and are due within 30 days of the invoice date.

DATA LICENSE REVOCABLE: At the sole discretion of NNHP, the data license may be terminated, revoked, and denied for all past, present, and future uses of the data set, when the earliest of the following occurs: (1) we have not received timely payment of the license fee or other mutually agreed compensation or exchange, or (2) requestor fails to remedy a breach of any other provision of this Agreement, to the satisfaction of NNHP, within 15 days of being notified of such breach.

EXPIRED DATA MUST BE DESTROYED: The data license and data set both expire no later than one year after NNHP supplied the data set, or when the data license is revoked for cause, whichever occurs first. The original and all copies of any expired data set must be destroyed by requestor within 3 business days of expiration.

ARCHIVE COPY PERMISSIBLE: If expiration was not due to revocation of license for cause, requestor may retain one archived copy of the expired data set for the sole purpose of supporting previous decisions and analyses. Expired data sets shall not be used to generate new products, analyses, or decisions, and shall be subject to the terms of this Agreement in perpetuity.

EXTENSIONS NOT GRANTED: If requestor needs access to the data set for longer than one year, a new data license and refreshed data set may be obtained from NNHP at a reduced fee if requested prior to expiration of the old data set. Requests received after expiration are subject to full license fees.

SCOPE OF DATA USE LIMITED: Except by written consent from NNHP, requestor shall not use the data set for any project or purpose other than the project and purpose stated in writing when the data were first requested.

DERIVED DATA PRODUCTS FOR EXTERNAL OR PUBLIC USE are limited to (1) mapped data displayed at a fixed scale of 1:3,000,000 or smaller; (2) mapped data not identifiable to species or ecosystem and displayed at a fixed scale of 1:1,000,000 or smaller, and/or (3) display or description of known presence/absence of individual species, ecosystems, or groups thereof, at the scale and precision of U.S. counties, 8-digit hydrologic units, or grid cell units larger than or equal to 36 square miles. These limitations do not apply to products supplied to NNHP.

DERIVED DATA PRODUCTS FOR INTERNAL USE ONLY include any and all products not meeting the requirements for external or public use listed in the paragraph above. Such products must be conspicuously marked “Confidential and Proprietary – For Internal Use Only” and may only be shared with members of the requesting organization and subcontractors authorized by NNHP.

COMMERCIAL USE LIMITED: Physical and electronic products derived in whole or in part from the data set shall not be sold for commercial gain. This does not preclude a for-profit requestor from supplying such products as contract deliverables, subject to all other terms of this Agreement.

DATA SOURCE MUST BE CITED: Any products derived from the data set must cite the Nevada Natural Heritage Program as a source, along with the month and year NNHP provided the data set.

DATA SET INCOMPLETE: The data set is the result of ongoing analyses and quality controls performed by NNHP staff using tools, concepts, and methods that are the property of NatureServe, Inc., and the Natural Heritage Network. The raw data we analyze are entrusted to us by various private and public organizations and individuals, obtained from published and unpublished literature, or in some cases derived from staff field surveys, and new data are constantly being received and incorporated.

SENSITIVE LOCATIONS OMITTED: NNHP generally withholds precise locational data for taxa considered highly vulnerable to collecting, poaching, harassment, or vandalism. Generalized data for such occurrences are provided in printed form. The more precise data may be supplied on request if sufficient need can be demonstrated and confidentiality can be guaranteed to the satisfaction of NNHP.

TAXONOMIC COVERAGE INCOMPLETE: With few exceptions, NNHP attempts to maintain current data on all species and subspecies in the state listed as threatened, endangered, candidate, or sensitive by any federal, state, or private organization, or otherwise considered at-risk by NNHP. The Nevada Department of Wildlife manages, protects, and restores Nevada’s wildlife resources and associated habitat, and their GIS Coordinator should be contacted (775-688-1565) to obtain further information regarding wildlife resources in your area of interest. The Nevada Division of Forestry, under N.R.S. 527.060-.120, protects and regulates the harvest of all cacti, yuccas, and evergreen trees, most taxa of which are not tracked by NNHP.

GEOGRAPHIC COVERAGE INCOMPLETE: NNHP data sets incorporate recent and historical occurrence reports from throughout the state of Nevada. In many cases NNHP has general information for areas outside the state, but we do not normally collect specific data for such areas. Except in rare cases where recent field surveys have been performed by NNHP, the data set only summarizes past reports received by us, is not a definitive representation of all species present or absent in a given place, and cannot be substituted for comprehensive surveys of any site or area. **Absence of evidence is not evidence of absence.**

LAND STATUS ATTRIBUTES ADVISORY ONLY: When land ownership or management status attributes are supplied with the data set, they have been derived from the best available maps and other information at the time, but usually are not further verified or updated. We do not assess the ownership status of associated mineral and water rights, or the presence or absence of easements or other encumbrances.

AGREEMENT PERPETUAL: To the fullest extent permitted by law, all provisions of this Agreement remain in effect in perpetuity for requestor, approved subcontractors of requestor, and any and all successors, heirs, and assigns of requestor and approved subcontractors, and shall survive expiration of the data set and digital data license granted under this Agreement.

DATA LICENSE RENEWAL: A signed copy of this Agreement shall be submitted with an individual's first data request and renewed annually for subsequent requests.

INDEMNIFICATION FOR CLAIMS ARISING FROM USE OF THE DATA SET: Licensee shall indemnify and save Licensor harmless from any and all liability, loss, damage, expense, causes of action, suits, claims, or judgments arising from injury to person or property resulting from or based upon the actual or alleged use of the data set by Licensee; and shall, at its own cost and expense, defend any and all suits which may be brought against Licensor, either alone or in conjunction with others upon any such liability or claims and shall satisfy, pay, and discharge any and all judgments and fines that may be recovered against Licensor in any such action or actions.

GOVERNING LAW: This Agreement shall be governed by and construed in accordance with Nevada state law applicable to contracts between residents of the state of Nevada and entered into and performed entirely within the state of Nevada. Any action instituted by the Licensee arising out of this Agreement shall only be brought and tried in Carson City, Nevada, in the First Judicial District Court in and for the state of Nevada.

ENTIRE AGREEMENT: This Agreement constitutes the entire agreement of the parties on the subject matter of this Agreement and supersedes all prior agreements and understandings. All amendments must be in writing signed by both parties.

NO WAIVER: No waiver of any breach of the Agreement shall constitute a waiver of a subsequent breach.

NO WARRANTIES: Except as expressly provided herein, NNHP disclaims any and all warranties, express or implied, regarding the license granted herein and the underlying data, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose (including particular hardware or software), or non-infringement.

REQUESTOR SIGNATURE:

Signature: _____ Date: _____

Printed Name: _____ Title: _____

Organization: _____