

**Nevada Division of Natural Heritage  
Department of Conservation  
and Natural Resources**  
901 South Stewart Street, Suite 5002  
Carson City, Nevada 89701  
Phone: (775) 684-2900

**And**

**Reno Fish and Wildlife Office  
U.S. Fish and Wildlife Service**  
1340 Financial Boulevard, Suite 234  
Reno, Nevada 89502  
Phone (775) 861-6300

**Southern Nevada Fish and Wildlife Office  
U.S. Fish and Wildlife Service**  
4701 North Torrey Pines Drive  
Las Vegas, Nevada 89130  
Phone (702) 515-5230

## **DIGITAL DATA LICENSE AGREEMENT**

**DIGITAL DATA LICENSE AGREEMENT** (“Agreement”) by and between the State of Nevada, Division of Natural Heritage (“NDNH”) and the U.S. Fish and Wildlife Service (“Service”), effective upon the date executed by NDNH.

**PURPOSE:** This Agreement is being entered into pursuant to Cooperative Agreement Award F20AC11691, representing an award of federal financial assistance to the NDNH from the Service. This Agreement allows these parties to broadly support each other in fulfilling their respective conservation-related missions, and specifically to ensure that the Service has access to the best available information regarding the location and distribution of species of conservation concern when exercising its authorities under various federal laws, including, but not limited to: the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), National Environmental Policy Act of 1970, as amended (42 U.S.C. 4321, *et seq.*), the Fish and Wildlife Coordination Act of 1934, as amended (16 U.S.C. 661 *et seq.*) and the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. 668 *et seq.*)

**LICENSE FEE DUE:** Consistent with the conditions of Cooperative Agreement Award F20AC11691 between the Service and NDNH, in consideration for the services herein described, the Service agrees to a one-time fee of \$30,000, which shall provide the Service with five years of access to the data set (corresponding to an annual fee of \$6,000). In exchange for this fee, the NDNH will: (1) provide the Service with a complete and current copy of its entire data set every six months (semi-annually), for the duration of the ensuing five years; (2) respond to periodic, customized data requests from the Service as may be needed to support the purpose and duration of this Agreement; and (3) work with the Service to prioritize the entry of data that may be needed by the Service to support the purpose of this Agreement.

**With this Agreement, the NDNH agrees to provide the following:**

**DATA LICENSE GRANTED:** Subject to all the terms of this Agreement, NDNH grants to the Service a limited, non-exclusive, non-transferable right of access to the data set (“data license”), for the sole use by the Service, and its contractors and subcontractors, consistent with the purpose

of this Agreement and for a period not to exceed five years from the effective date of this agreement.

**DATASET DELIVERY:** Dataset will be delivered via NDNH File Transfer Protocol, or other agreed upon mechanism, every six months. NDNH will inform the Service of data availability via an email to Reno Fish and Wildlife Office and Southern Nevada Fish and Wildlife Office Field Supervisors and GIS coordinators.

**METADATA:** Each dataset provided by the NDNH to the Service shall contain complete FGDC or ISO 19115 compliant metadata, to be included as a separate XML file. Metadata will include detailed descriptions of creation methods, analysis steps, spatial and attribute description and accuracies, complete data dictionaries, as well as use constraints and any other relevant information that could affect interpretation of applicability of these data for any potential purpose.

**The NDNH also acknowledges the following regarding the dataset to be provided:**

**DATA SET INCOMPLETE:** The data set is the result of ongoing analyses and quality controls performed by NDNH staff, using tools, concepts, and methods that are the property of NatureServe, Inc., and the Natural Heritage Network. These data 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:** NDNH 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 NDNH.

**TAXONOMIC COVERAGE INCOMPLETE:** With few exceptions, NDNH 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 NDNH. The Nevada Department of Wildlife manages, protects, and restores Nevada's wildlife resources and associated habitat, and their GIS/Data Coordinator should be contacted (775-688-1580) 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 NDNH.

**GEOGRAPHIC COVERAGE INCOMPLETE:** NDNH data sets incorporate recent and historical occurrence reports from throughout the state of Nevada. In many cases NDNH 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 NDNH, 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. NDNH does not assess the ownership status of associated mineral and water rights, or the presence or absence of easements or other encumbrances.

**With this Agreement, the Service agrees to the following provisions:**

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

**DATA SET PROPRIETARY:** The data set, and the analytic tools and processes from which it is derived, remains the proprietary property of the owners. The data set shall be treated as proprietary in all respects by the Service. The Service agrees that it will seek to protect the data set from release under all applicable federal law, including requests filed with the Service pursuant to the Freedom of Information Act (FOIA; 5 U.S.C. §552 as amended), to the extent allowed under such laws, and otherwise shall implement all procedures otherwise reasonably necessary to protect owners’ proprietary rights.

**DATA LICENSE LIMITED:** Unless expressly provided for within other sections of this Agreement, 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 Service, by any means electronic, written, verbal, or otherwise, without the consent of NDNH. Any and all requests for data access from third parties, including under requests made pursuant to the FOIA shall first be directed to NDNH.

**CONTRACTORS AND SUBCONTRACTORS MUST SIGN SEPARATE AGREEMENT:**

Any contractors or subcontractors of the Service who require access to the data set must sign a copy of NDNH’s standard form of this Agreement. The Service will notify NDNH of all such entities granted access to the data by providing NDNH with copies of all Agreements signed by contractors or subcontractors of the Service, on an annual basis, at the beginning of each calendar year, and maintaining a current and comprehensive list of all such entities granted access to the data pursuant to this Agreement. Any such releases of NDNH data to Service contractors or subcontractors will occur through the Service’s GIS coordinators in the Reno or Southern Nevada Fish and Wildlife Offices, after obtaining the approval (documented via surname) of their office’s Field Supervisor.

**DATA ACCESS LIMITED:** The Service shall ensure that access to the data set is limited to Service staff, contractors, and subcontractors with a legitimate need to access the data consistent with this Agreement’s stated purpose. The Service is responsible for informing said individuals of the terms of this Agreement.

**PRODUCTS RESULTING FROM NDNH DATA:** Copies of any products (such as new population data, models, theses, peer-reviewed journal articles, etc.) produced from the Service’s use of the data set must be submitted to NDNH at the conclusion of the project, or else concurrent with NDNH’s distribution of the data set to the Service.

**ARCHIVE COPY PERMISSIBLE:** The Service may retain archival copies of expired data sets for the purpose of maintaining a record of information sources used in support of its analyses and decisions. Archival data sets stored by the Service will be labeled in a manner that clearly identifies the data as out-of-date (expired). Archival data sets will not be used to generate new products, analyses, or decisions, and shall be subject to the terms of this Agreement in perpetuity.

**SCOPE OF DATA USE LIMITED:** Except by written consent from NDNH, the Service shall not use the data set for any purpose that is inconsistent with the purpose of this Agreement.

**DERIVED DATA PRODUCTS FOR EXTERNAL OR PUBLIC USE:** The Service and NDNH acknowledge that the release of sensitive data (including species locations) for external or public use has the potential to cause harm to sensitive species, sites, or other natural resources. The Service and NDNH also acknowledge that release of such sensitive data could be required in response to FOIA requests filed with the Service, and is often required in the course of the Service's fulfillment of its other authorities and responsibilities, such as in the context of Service-issued designations of critical habitat. To the maximum extent possible, the Service will exercise due diligence to protect sensitive data and minimize the likelihood of any harmful data release of NDNH data for external and public use, including but not limited to FOIA requests. When NDNH data are used in maps intended to be made available to the public, the Service will seek to ensure that the mapped data is displayed at a coarse enough map scale that minimizes the potential for on-the-ground discovery of sensitive species information. Specifically, wherever feasible, the Service will adhere to these guidelines when producing maps for external or public use: (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 that use publicly-available species occurrence data (e.g., museum specimen data), or products supplied by the Service to NDNH. Nothing in this provision or Agreement is intended to restrict the Service from carrying out its responsibilities in an open, transparent, and deliberative manner.

**DERIVED DATA PRODUCTS FOR INTERNAL USE:** Include any and all products not meeting the description of "external or public use" in the paragraph above. Products produced with data obtained under this Agreement will be conspicuously labeled "Sensitive and Potentially Proprietary Data – Do Not Distribute."

**COMMERCIAL USE LIMITED:** Physical and electronic products derived in whole or in part from the data set shall not be sold for commercial gain.

**DATA SOURCE MUST BE CITED:** Any products derived from the data set must cite the NDNH as a source, along with the month and year NDNH provided the data set. Suggested citation: Nevada Division of Natural Heritage. Month Year. Biotics 5 Source Feature Records GIS Dataset (or appropriate data type provided). Nevada Department of Conservation and Natural Resources, Carson City.

**DATA LICENSE RENEWAL:** A signed copy of this Agreement shall be submitted with any request for renewal by the Service.

**DATA LICENSE REVOCABLE:** Termination of Cooperative Agreement F20AC11691 for any reason, by either NDNH or the Service, will result in revocation of this Data Exchange Agreement.

**With this Agreement, the Service and NDNH agree to the following provisions:**

**EXPIRED DATA:** This data license expires five years after NDNH supplies the first complete data set, or when the data license is revoked for cause, whichever occurs first. Data provided to the Service pursuant to this Agreement shall be regarded as expired upon the Service's receipt of a new, complete data set from NDNH (semi-annually, as specified under the terms of this Agreement).

**AGREEMENT PERPETUAL:** To the fullest extent permitted by law, all provisions of this Agreement remain in effect in perpetuity for the Service and any successor agency; and also its contractors or subcontractors, and any and all successors, heirs, and assigns of said contractors and subcontractors, and shall survive expiration of the data set and digital data license granted under this Agreement.

**HOLD HARMLESS FOR CLAIMS ARISING FROM USE OF THE DATA SET:** The Service shall save NDNH 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 the Service.

**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 to the extent that the Service may be subject to such state law, and otherwise under any applicable federal law then in effect.

**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, NDNH 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.

**FOR THE RENO FISH AND WILDLIFE OFFICE,  
U.S. FISH AND WILDLIFE SERVICE:**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: Marc Jackson

Title: Field Supervisor

**FOR THE SOUTHERN NEVADA FISH AND WILDLIFE OFFICE,  
U.S. FISH AND WILDLIFE SERVICE:**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: Glen Knowles

Title: Field Supervisor

**FOR THE NEVADA DIVISION OF NATURAL HERITAGE:**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: Kristin Szabo

Title: Administrator