

Nevada Division of Natural Heritage

Nevada 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, DIVISION OF NATURAL HERITAGE**, (“NDNH” or “Licensor”) and

Name (“Licensee” or “requestor”)

Each requestor who accepts or uses data (“the data set”) provided by NDNH under this Agreement agrees to all of 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, 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, NDNH 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 NDNH 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 NDNH. Any and all requests for data access from third parties shall be directed to NDNH.

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 NDNH fee schedule and payment policy incorporated here by reference unless a separate data exchange agreement is in place between NDNH 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 NDNH, 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 NDNH 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 NDNH 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 three 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 NDNH 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 NDNH, 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 NDNH.

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 NDNH.

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 Division of Natural Heritage 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 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. 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: 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 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 NRS 527.060-527.120, 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. We do not assess the ownership status of associated mineral and water rights, or the presence or absence of easements or other encumbrances.

COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS: Requestor shall comply with all applicable federal, state, and local laws and regulations affording protection to plant, invertebrate, and wildlife species and their habitat. Such laws and regulations include, but are not limited to, Nevada Revised Statute (NRS) Title 47- Forestry; Forest Products and Flora, specifically NRS 527.260 Legislative finding regarding protection and propagation of selected species of native flora and NRS 527.270 List of fully protected species declared to be threatened with extinction; special permit required for removal or destruction; NRS Title 45, specifically NRS 501.100 Legislative declaration regarding wildlife; NRS 501.110 Classification of wildlife; NRS 503.610 Protection of bald eagle and golden eagle; NRS 503.620 Protection of birds included in Migratory Bird Treaty Act; and federal laws and regulations pertaining to threatened and endangered species.

RECIPROCITY OF DATA: As a recipient of data from NDNH, Requestor agrees to submit any observations of plant, wildlife, invertebrate, and habitat occurrences recorded in association with the use of NDNH's data. Requestor shall provide data meeting [NDNH minimum data standards](#) in a compatible format within 12 months of completion of field activities. Field observation forms and Survey123 links may be obtained from our [website](#); we will also accept digital data via email in the form of reports, spreadsheets, data sets, or spatial layers. NDNH actively solicits and encourages additions, corrections, updates, and comments on any data we provide. Data submissions help to ensure we are completing our mission of providing the most up-to-date data possible to inform land-use planning decisions.

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, 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.

REMEDIES: Except as otherwise provided for by law or this Agreement, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. For purposes of an award of attorneys' fees to either party, the parties stipulate and agree that a reasonable hourly rate of attorneys' fees shall be one hundred and fifty dollars (\$150.00) per hour. The state may set off consideration against any unpaid obligation of Licensor to any state agency in accordance with NRS 353C.190. In the event that Licensor voluntarily or involuntarily becomes subject to the jurisdiction of the Bankruptcy Court, the state may set off consideration against any unpaid obligation of Licensor to the state or its agencies, to the extent allowed by bankruptcy law, without regard to whether the procedures of NRS 353C.190 have been utilized.

LIMITED LIABILITY: The state will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Damages for any state breach shall never exceed the amount of funds appropriated for payment under this Agreement, but not yet paid to Licensor, for the Fiscal Year budget in existence at the time of the breach. Licensor's tort liability shall not be limited.

FORCE MAJEURE: Neither party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of Nature, including without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.

REQUESTOR SIGNATURE:

Signature: _____ Date: _____

Printed Name: _____ Title: _____

Organization: _____