

# ARDC Standard Terms of Service

## Background

This document sets out ARDC's standard terms of service, which apply to the User's use of the Service.

## Agreements

### 1 Definitions and interpretation

1.1 Where commencing with a capital letter:

**Aggregate Data** means de-identified administrative or statistical data derived from a user's use of the Service;

**ARDC** means Australian Research Data Commons Limited (**ARDC**) ACN 633 798 857;

**Intellectual Property** means all patents, trade marks, designs, EL rights, copyright, know-how and trade secrets (whether registered or not) as well as any application for registration of any of the foregoing;

**Loss** means any loss, damage, injury, cost, expense or liability (including all legal costs, whether incurred or awarded);

**Personal Information** has the meaning given to it in section 6 of the Privacy Act 1988;

**Service Schedule** means the service schedule for an ARDC service, signed by or on behalf of the User;

**Services** means the services specified in the Service Schedule;

**Term** means the term specified in the Service Schedule; and

**User** means the person identified in the Service Schedule.

1.2 Where a word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning.

1.3 Unless the context otherwise requires:

(a) a word that denotes:

(i) the singular denotes the plural and vice versa; and

(ii) a person includes an individual, a body corporate, an unincorporated entity and a government; and

- (b) a reference to:
  - (i) a party includes the executors, administrators and successors of the party;
  - (ii) any legislation includes any regulation or instrument made under it and any amended, re-enacted or replacement legislation;
  - (iii) a government department or statutory body includes any replacement government department or statutory body;
  - (iv) any agreement or other document includes that agreement or document as amended or replaced;
  - (v) money is to Australian dollars unless otherwise stated; and
  - (vi) any thing (including any amount) is a reference to the whole and each part.

1.4 In this agreement:

- (a) clause headings are for convenience only and do not affect interpretation; and
- (b) “including” and its other grammatical forms are not words of limitation.

## **2 Inconsistency**

To the extent of any inconsistency between these terms and the terms of the Service Schedule, the terms of the Service Schedule prevail.

## **3 Licence**

ARDC grants the User a non-exclusive, non-transferable, non-sublicensable licence to use the Service during the Term.

## **4 Use of the Service**

4.1 The User must not use or access the Services:

- (a) to engage in fraudulent behaviour;
- (b) to defame, harass or engage in any form of unsolicited communications with any third party;
- (c) in a manner that infringes the copyright, moral rights or any Intellectual Property rights of any third party (including third-party software licenses or service agreements); or
- (d) to a degree that unreasonably affects other users of the Service, co-located infrastructure or services provided by or through ARDC.
- (e) to post, process or transmit on or through the Service:
  - (i) any unlawful, threatening, abusive, defamatory, obscene, vulgar, pornographic, profane or indecent material of any kind whatsoever, including without limitation any

transmissions that would constitute a criminal offence, give rise to civil liability or otherwise violate any applicable law;

- (ii) material of any kind whatsoever which violates or infringes upon the rights of any other person (including Intellectual Property rights or rights under any privacy law applicable to ARDC, including the *Privacy Act 1988*), without first obtaining permission from the owner or relevant individual or right holder; or
- (iii) material of any kind which consists of (or is linked to) any spyware, computer virus, Trojan horse, worm, keystroke logger, rootkit or other malicious computer software.

4.2 The User acknowledges and agrees that it:

- (a) must ensure it complies with all applicable laws, regulations, codes and guidelines;
- (b) is responsible for backing up its data or configuration; and
- (c) is responsible for independently verifying the accuracy, currency and completeness of any information output by or obtained through the Service.

4.3 The User must comply with any reasonable request or direction from ARDC in respect of the Service.

## 5 Data Breaches

If a party is aware or reasonably suspects that there has been or may be any unauthorised disclosure of or unauthorised access to Personal Information that the ARDC holds in connection with this agreement (**Data Breach**) that party must notify the other as soon as reasonably practicable and the parties agree to:

- (a) promptly investigate the Data Breach;
- (b) take all reasonable steps to:
  - (i) remedy the Data Breach; and
  - (ii) prevent serious harm occurring to the relevant individuals; and
- (c) provide the other party with such information and assistance as it reasonably requests in respect of the Data Breach.

## 6 Intellectual Property

6.1 The User grants ARDC a royalty-free worldwide licence (including the right to sublicense) to any Intellectual Property posted, processed, transmitted or stored on or transmitted through the Service to the extent necessary for ARDC to provide the Service.

6.2 Nothing in this agreement affects the ownership of any of the User's Intellectual Property rights or ARDC's Intellectual Property rights in the Service.

6.3 Where a User has provided any Intellectual Property or any other material (including data and metadata) under a prior agreement regarding the Service (including with a previous operator of the

Service) the terms of this agreement apply as if that Intellectual Property or other material was supplied by the User under this agreement.

## 7 Warranties

7.1 Although ARDC takes care to ensure otherwise, it does not warrant or guarantee:

- (a) that the User's access to the Service will be uninterrupted or secure;
- (b) that the Service is free of viruses or bugs; or
- (c) the integrity, value, reliability, accuracy and completeness of anything hosted on or generated by the Service, or the actions of third parties (including other users of the Service).

7.2 To the extent permitted by law, all implied terms and warranties are excluded.

## 8 Liability and indemnity

8.1 To the extent permitted by law, in no event will ARDC be liable to you or any third party for any Loss arising from your use of or reliance on the Service, or any technical failures, delays in operation or transmission or malfunctions in equipment or software.

8.2 If statutory consumer guarantees or implied terms apply to the supply of a service, to the extent permitted by law, ARDC's liability for any breach of those consumer guarantees or implied terms is limited to, at ARDC's option, provision of the services again, or paying the cost of having the services provided again.

8.3 The User indemnifies ARDC, its employees, officers, agents and persons involved in the delivery of the Services (**Indemnified**) against any Loss suffered or incurred by ARDC during or after the Term in relation to:

- (a) any breach by the User of its obligations under this agreement;
- (b) any act or omission of the User, its employees, agents or contractors that causes or results in damage to property or death or injury of a third party; or
- (c) any demand, claim or proceedings under any cause of action alleging that Intellectual Property posted, processed, transmitted or stored on or through the Service by or on behalf of the User infringes the Intellectual Property rights of a third party,

except to the extent that the Loss is caused or contributed to by the act or omission of the Indemnified.

## 9 Termination

9.1 A party may, by notice to the other, terminate this agreement if the other party:

- (a) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration or, being an individual, commits an act of bankruptcy or enters into a scheme of arrangement with creditors;

- (b) fails, within 14 days after receipt of notice, to remedy any breach of its obligations under this agreement that are capable of remedy;
- (c) breaches any of its obligations under this agreement that are not capable of remedy; or
- (d) persistently breaches its obligations under this agreement.

9.2 Each Service Schedule forms a separate agreement between ARDC and the User. Termination of one agreement does not affect any other agreement.

## **10 Notices**

10.1 A notice under this agreement must be in writing and may be given to the addressee by:

- (a) delivering it to the address of the addressee;
- (b) sending it by registered post to the address of the addressee; or
- (c) sending it to the email address of the addressee.

10.2 A notice given under clause 10.1 is deemed to have been received:

- (a) if delivered, at the time of delivery;
- (b) if sent by registered post from within Australia, on the 3rd day after posting; or
- (c) if sent by email, on the day it is sent, unless the sender receives a bounce-back indicating the email has not reached the mailbox of the addressee.

## **11 Miscellaneous**

11.1 This agreement embodies the entire understanding and agreement between the parties as to its subject matter.

11.2 All previous negotiations, understandings, representations, warranties, documents or commitments in relation to, or in any way affecting, the subject matter of this agreement are merged in and superseded by this agreement.

11.3 Each party must promptly sign all documents and do all things that the other party reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it.

11.4 In relation to any GST payable for a taxable supply by a party under this agreement, the recipient of the supply must pay the GST subject to the supplier providing a tax invoice. Terms used in this clause 11.4 that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act.

11.5 The User must not assign any of its rights or novate any of its obligations under this agreement.

11.6 Where the consent or approval of ARDC is required under this agreement, ARDC may, except as expressly stated, withhold its consent or approval or give it conditionally or unconditionally as it sees fit.

- 11.7 A waiver under this agreement is not binding on a party unless it is in writing and signed by the party. A waiver is not a waiver of any other right.
- 11.8 A variation of this agreement must be in writing and signed by both parties. ARDC may update these terms from time to time by posting the updated terms on its website. The amended terms will be effective from the date of posting.
- 11.9 Each of the agreements of the parties under this agreement is severable from the others and the severance of one agreement does not affect the other agreements.
- 11.10 Except as expressly stated in this agreement:
- (a) nothing in this agreement creates an agency, partnership, joint venture or employment relationship between the parties or any of their respective employees, agents or contractors; and
  - (b) neither party nor any person acting on behalf of that party may hold themselves out as being entitled to contract or accept payment in the name of or on account of the other party.
- 11.11 This agreement is governed by and must be construed in accordance with the laws of Victoria, Australia.
- 11.12 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria, Australia and all courts that have jurisdiction to hear appeals from those courts and waives any right to object to proceedings being brought in those courts for any reason.