

# LICENCE

DATED

2009

THE UNIVERSITY COURT OF THE UNIVERSITY OF EDINBURGH

-and-

[INSTITUTION]

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LAND LIFE LEISURE DATABASE LICENCE AGREEMENT

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## LAND LIFE LEISURE DATABASE LICENCE AGREEMENT

**THE UNIVERSITY COURT OF THE UNIVERSITY OF EDINBURGH** incorporated under the Universities (Scotland) Acts and having its principal offices at Old College, South Bridge, Edinburgh, EH8 9YL acting for the purposes of this Agreement through that part of its academic services known as EDINA ("EDINA").

OFFERS to you, the Institution, permission to access and use the Land Life Leisure Database but only on the terms and conditions as set out in this Agreement.

Acceptance of this Agreement will be by delivery of a completed Acceptance of Licence Form attached hereto to EDINA. Acceptance shall be acceptance of all terms and conditions of this Agreement and no variation or counter offer will be accepted by EDINA.

### RECITALS

**WHEREAS** the Land Life Leisure Database is a database of citations from a variety of sources covering a wide range of topics including rural affairs, environmental studies, leisure and tourism created by Aberystwyth University, ("Aberystwyth University") and hosted and provided by EDINA;

**AND WHEREAS** the Land Life Leisure Database and all Intellectual Property Rights (as hereafter defined) therein are owned by or licensed to the Aberystwyth University;

**AND WHEREAS** the Aberystwyth University has granted EDINA a non-exclusive licence to access and use the Land Life Leisure Database and the right to sub-licence such access and use of the Land Life Leisure Database to further and higher education institutions in the United Kingdom and other organisations approved by the Aberystwyth University from time to time;

### IT IS AGREED AS FOLLOWS:

#### 1. DEFINITIONS

1.1 In this Agreement, the following expressions shall have the following meanings:

"Authorised Users" means individuals who are authorised by the Institution to access the Licensed Work whether on-site or off site via Secure Authentication and who are affiliated to the Institution as a current student (undergraduates and postgraduates), member of staff (whether on a permanent or a temporary basis) or contractor of the Institution. Persons who are not a current student, member of staff or a contractor of the Institution, but who are permitted to access the Institution's information services from computer terminals within the physical premises of the Institution ["Walk-In Users"] are also deemed to be Authorised Users, only for the time they are within the physical premises of the Institution. Walk-In Users may not be given means to access the Licensed Work when they are not within the physical premises of the Institution.

"Commercial Use" means use of the Licensed Work for the purpose of monetary reward (whether by or for the Institution or an Authorised User) by means of the sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Work. For the avoidance of doubt, neither the recovery of

direct cost by the Institution from Authorised Users, nor use by the Institution or Authorised Users of the Licensed Work in the course of research funded by a commercial organisation is deemed to constitute Commercial Use.

"Educational Purposes"	means for the purpose of education, teaching, distance learning, private study and/or research.
"Fee"	means the fee as set out in Schedule 1.
"Intellectual Property Rights"	means patents, trademarks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.
"Licensed Work"	means the product licensed in this Agreement known to the parties as 'Land Life Leisure' being a database of citations relating to agriculture, the environment, rural affairs and tourism.
"Secure Authentication"	means access to the Licensed Work via UK Federation login, Internet Protocol ("IP") ranges or by a username and password provided by the Institution or by another means of authentication agreed between EDINA and the Institution.
"Secure Network"	means a network which is only accessible by Secure Authentication.

1.2 Headings contained in this Agreement are for reference purposes only and shall not be deemed to be an indication of the meaning of the clause to which they relate.

1.3 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

## **2. GRANT OF LICENCE**

2.1 In consideration for the Fee, EDINA hereby grants the Institution a non-exclusive non-transferable licence to access and use the Licensed Work and to allow Authorised Users to access and use the Licensed Work on the terms and conditions as set out in this Licence.

## **3. USE OF THE LICENSED WORK**

3.1 Throughout the term of this Agreement, the Institution may for Educational Purposes only:

3.1.1 make such local electronic copies of all or part of the Licensed Work as are necessary to ensure efficient use by Authorised Users, provided that such use is subject to all the terms and conditions of this Agreement;

3.1.2 allow Authorised Users to access the Licensed Work by Secure Authentication in order to search, retrieve, display and view, and otherwise use portions thereof;

3.1.3 allow Authorised Users to electronically save parts of the Licensed Work;

- 3.1.4 allow Authorised Users to print out copies of individual article references from the Licensed Work;
  - 3.1.5 provide single printed or electronic copies of individual article references from the Licensed Work at the request of individual Authorised Users;
  - 3.1.6 supply to an authorised user of another library (whether by post, fax or secure electronic transmission, using Ariel or its equivalent, whereby the electronic file is deleted immediately after printing) a single paper copy of an electronic original of parts of the Licensed Work;
  - 3.1.7 incorporate parts of the Licensed Work in printed and electronic course packs, study packs, resource lists and in any other material (including but not limited to multi-media works) to be used in the course of instruction and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments and library environments) hosted on a Secure Network. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner. Course packs in non-electronic non-print perceptible form, such as Braille, may also be offered to Authorised Users;
  - 3.1.8 incorporate parts of the Licensed Work in printed or electronic form in assignments and portfolios, theses and in dissertations (“the Academic Works”), including reproductions of the Academic Works for personal use and library deposit, if such use conforms to the customary and usual practice of the Institution provided that by so doing parts of the Licensed Work will not be accessible to persons who are not Authorised Users except that reproductions in printed or electronic form of Academic Works may be provided to sponsors of such Academic Works. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner;
  - 3.1.9 display, download and print parts of the Licensed Work for the purpose of promotion of the Licensed Work, testing of the Licensed Work, or for training Authorised Users;
  - 3.1.10 publicly display or publicly perform parts of the Licensed Work as part of a presentation at a seminar, conference, or workshop, or other such similar activity;
  - 3.1.11 make such copies of training material and network such training material as may be required for the purpose of using the Licensed Work in accordance with this Agreement; and
- 3.2 This Agreement shall be deemed to complement and extend the rights of the Institution and Authorised Users under the Copyright, Designs and Patents Act 1988 and the Copyright (Visually Impaired Persons) Act 2002 and nothing in this Licence shall constitute a waiver of any statutory rights held by the Institution and Authorised Users from time to time under these Acts or any amending legislation.

#### **4. RESTRICTIONS**

- 4.1 Save as provided herein, the Institution and Authorised Users may not:
- 4.1.1 sell or resell the Licensed Work unless the Institution or an Authorised User has been granted prior written consent by EDINA to do so;
  - 4.1.2 remove, obscure or modify copyright notices, text acknowledging or other means of identification or disclaimers as they appear;
  - 4.1.3 alter, adapt or modify the Licensed Material, except to the extent necessary to make it perceptible on a computer screen, or as otherwise permitted in this Agreement. For the avoidance of doubt, no alteration of the words or their order is permitted;
  - 4.1.4 display or distribute any part of the Licensed Work on any electronic network, including without limitation the Internet and the World Wide Web, and any other

distribution medium now in existence or hereinafter created, other than by a Secure Network;

4.1.5 use all or any part of the Licensed Work for any Commercial Use or for any purpose other than Educational Purposes.

4.2 This Clause shall survive termination of this Agreement for any reason.

## **5. RESPONSIBILITIES OF THE INSTITUTION**

5.1 The Institution will:

5.1.1 issue passwords or other access information only to Authorised Users and use all reasonable efforts to ensure that Authorised Users do not divulge their passwords or other access information to any third party;

5.1.2 use all reasonable efforts to ensure that only Authorised Users are permitted access to the Licensed Work;

5.1.3 use all reasonable efforts to ensure that all Authorised Users are made aware of and undertake to abide by the terms of this Agreement;

5.1.4 use all reasonable efforts to monitor compliance and notify EDINA immediately and provide full particulars on becoming aware of any of the following (a) any unauthorised use of any of the Institution's password(s); or (b) any breach by an Authorised User of the terms of this Agreement. Upon becoming aware of any breach of the terms of this Agreement the Institution further agrees promptly to fully investigate and initiate disciplinary procedures in accordance with the Institution's standard practice and use all reasonable effort to ensure that such activity ceases and to prevent any recurrence;

5.1.5 comply with all computer security procedures required by EDINA and take all reasonable steps to ensure the security of the Licensed Work; and

5.1.6 provide lists of valid IP addresses to EDINA and update those lists on a regular basis the frequency of which will be agreed by the parties from time to time.

## **6. RESPONSIBILITIES OF EDINA**

6.1 EDINA shall ensure access and use of the Licensed Work in accordance with the provisions as laid down in this Agreement.

6.2 EDINA shall cause product support to be provided to the Institution and to Authorised Users.

## **7. USAGE DATA**

7.1 The parties shall co-operate in gathering any data on usage of the Licensed Work that is available to them during the term of this Agreement, and shall provide such data to each other upon request. Notwithstanding the foregoing, the parties shall neither assemble nor provide data from which an individual user could be identified.

## **8. FEE**

8.1 The Institution will pay an annual fee to EDINA for the rights granted to the Licensed Work in the amount and upon terms as set out in Schedule 1.

## **9. TERM AND TERMINATION**

- 9.1 The term of this Agreement will commence upon the date of signature and, unless terminated earlier in accordance with the terms of this Clause 9, will remain in full force and effect until 31<sup>st</sup> July 2010.
- 9.2 Either party may terminate this Agreement at any time on the material breach or repeated other breaches by the other of any obligation on its part under this Agreement by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party remedies the breach forthwith by written notice to the other party.
- 9.3 Upon termination of this Agreement by the Institution due to a material breach or repeated other breaches by EDINA, EDINA will reimburse the Licensee a pro rata proportion of the Fee paid by the Institution for the unexpired period of this Agreement.
- 9.4 Upon termination of this Agreement, copies of parts of the Licensed Work made by the Institution or Authorised Users may be retained. Print copies may be used after termination of this Agreement subject to the terms of Clauses 3 and 4 of this Agreement, which terms shall survive any termination of this Agreement. Save as provided for in Clause 3.1.12, the use of electronic copies after termination of this Agreement requires the authorisation from EDINA (and no such use shall be made without such authorisation) and the conditions of use are not subject to this Agreement.

## **10. ACKNOWLEDGEMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

- 10.1 The Institution acknowledges that the Intellectual Property Rights in the Licensed Work are the sole and exclusive property of the Aberystwyth University and that they are duly licensed to EDINA and that this Agreement does not assign or transfer to the Institution any right, title or interest therein except for the right to use the Licensed Work in accordance with the terms and conditions of this Agreement.

## **11. REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION**

- 11.1 The Institution represents and warrants that it has sufficient authority and rights to enter into and perform its obligations under this Agreement.
- 11.2 EDINA represents and warrants that it has the right to grant the licence as set out in this Agreement and that the use of the Licensed Work by the Institution and Authorised Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party. The foregoing shall not apply to improper usage of the Licensed Work by the Institution or Authorised Users. EDINA makes no representation or warranty, and expressly disclaims any liability with respect to the content of the Licensed Work, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information.
- 11.3 The Institution agrees to notify the Aberystwyth University and EDINA immediately and provide full particulars in the event that it becomes aware of any actual or threatened claims by any third party in connection with any works contained in the Licensed Work. It is expressly agreed that upon such notification, or if the Aberystwyth University becomes aware of such a claim from other sources, the Aberystwyth University may remove such work(s) from the Licensed Work. At the request of the Aberystwyth University, the Institution will make all reasonable efforts to remove such work(s) from any copies of the Licensed Work maintained by the Institution. Failure to report knowledge of any actual or threatened claim by any third party shall be deemed a material breach of this Agreement.
- 11.4 Nothing in this Agreement shall make the Institution liable for breach of the terms of this Agreement by any Authorised User provided that the Institution did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.

- 11.5 Subject to the above and to the extent permitted by law, EDINA shall not be liable to the Institution for any loss or damage including any loss of profits, goodwill, contract or any indirect or consequential loss including loss or damage suffered by the Institution as a result of an action brought by a third party.
- 11.6 The Aberystwyth University reserves the right to change the content, or availability of parts of the Licensed Work at their sole discretion. EDINA will notify the Institution of any substantial change to the Licensed Work.
- 11.7 Other than the express warranties stated in this Clause 11, the Licensed Work is provided on an “as is” basis, and EDINA disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Licensed Work or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose. EDINA further expressly disclaims any warranty or representation to Authorised Users, or to any third party. EDINA accepts no liability for loss suffered or incurred by the Sub-Licensee or Authorised Users as a result of their reliance on the Licensed Work.
- 11.8 The Institution represents to EDINA that its computer system through which the Licensed Work will be used is configured, and procedures are in place, to prohibit access to the Licensed Work by any person other than an Authorised User; that it shall inform Authorised Users about the conditions of use of the Licensed Work; and that during the term of this Agreement, the Institution will continue to make all reasonable efforts to bar non-permitted access and to convey appropriate use information to its Authorised Users.
- 11.9 EDINA and the Institution do not seek to exclude liability under this Agreement for fraud or for personal injury or death caused by its negligence and the negligence of its employees, authorised sub-contractors and agents.

## **12. FORCE MAJEURE**

- 12.1 Either party’s failure to perform any term or condition of this Agreement as a result of circumstances beyond the control of the relevant party (including without limitation, war, strikes, flood, governmental restrictions, and power, telecommunications or Internet failures or damages to or destruction of any network facilities) ["Force Majeure"] shall not be deemed to be, or to give rise to, a breach of this Agreement.
- 12.2 If either party to this Agreement is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure and if such party gives written notice thereof to the other party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the party in question shall be excused the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue.

## **13. ASSIGNMENT**

- 13.1 Neither this Agreement nor any of the rights under it may be assigned or sub-licensed by either party without obtaining the prior written consent of the other party. In any permitted assignment, the assignor shall procure and ensure that the assignee shall assume all rights and obligations of the assignor under this Agreement and agrees to be bound to all the terms of this Agreement.

## **14. GOVERNING LAW AND DISPUTE RESOLUTION**

- 14.1 This Agreement shall be governed by and construed in accordance with Scots law and the parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the Scottish courts.

- 14.2 The parties agree to use best efforts to resolve disputes in an informal manner, by decision of the Principal of University of Edinburgh and the Vice Chancellor of the Institution. Where the parties agree that a dispute arising out of or in connection with this Agreement would best be resolved by the decision of an expert, they will agree upon the nature of the expert required and together appoint a suitable expert by agreement. In default of agreement upon whom to appoint as a suitable expert, such expert shall upon the request of either party be appointed by the Chair for the time being of Universities UK.
- 14.3 Any person to whom a reference is made under Clause 14.2 shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the parties except in the case of manifest error or fraud.
- 14.4 Each party shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.
- 14.5 The costs of the expert shall be borne by the parties in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by the parties in equal proportions.

## 15. NOTICES

- 15.1 All notices required to be given under this Agreement shall be given in writing in English and sent by courier or special delivery to the relevant addressee at its address set out below, or to such other address as may be notified by either party to the other from time to time under this Agreement, and all such notices shall be deemed to have been received three days after posting where sent by special delivery or on despatch in the case of despatch by courier

if to the Institution:

[insert details]

if to EDINA

EDINA  
 Edinburgh University Data Library  
 Causewayside House  
 160 Causewayside  
 Edinburgh EH9 1PR  
 edina@ed.ac.uk  
 Fax: 0131 650 3308  
 Tel: 0131 650 3302

## 16. GENERAL

- 16.1 This Agreement, Schedules and Annexes constitute the entire agreement between the parties relating to the Licensed Work and supersede all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement of both parties in writing.
- 16.2 The Schedules shall have the same force and effect as if expressly set in the body of this Agreement and any reference to this Agreement shall include the Schedules.
- 16.3 No provision in this Agreement is intended to be enforceable by a person who is not a party to this Agreement.
- 16.4 The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.

- 16.5 The rights of the parties arising under this Agreement shall not be waived except in writing. Any waiver of any of a party's rights under this Agreement or of any breach of this Agreement by the other party shall not be construed as a waiver of any other rights or of any other or further breach. Failure by either party to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

## **SCHEDULE 1: FEE AND PAYMENT TERMS**

By returning a signed copy of this Agreement, the Institution accepts that it must pay to EDINA the total sum of the fee for the whole term of this Licence EDINA will invoice the Institution for the fee as set out below. The price is exclusive of VAT, which will be payable where applicable.

Fee for Land Life Leisure Database (ex VAT):

Bands A and B	£788
Bands C and D	£735
Bands E and F	£683
Band G	£635
Band H	£578
Band I	£525
Band J	£473

**LAND LIFE LEISURE LICENCE AGREEMENT**

**ACCEPTANCE OF LICENCE FORM**

The Institution hereby accepts and agrees to the terms and conditions of this Agreement.

**Name of the Institution):**

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**Full postal address of The Institution:**

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**Telephone:**

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**Fax:**

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**E-mail:**

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**Signature:**

.....

**Signed by:**

.....

**Position:**

.....

**Date:**

.....

**Contact persons for support and communications regarding the administration of this Agreement**

**Primary contact – Site representative:**.....

Dept:.....

Phone No:..... Fax No: .....

E-mail Address:.....

**Deputy contact – Site representative:**.....

Dept:.....

Phone No:..... Fax No: .....

E-mail Address:

.....

**Access requirements:**

Access will be via UK federation logins and direct (IP) access (if requested).

Details of joining the UK federation are available at  
<http://www.ukfederation.org.uk/content/Documents/JoinFederation>

UK federation contact details **for the Institution:** .....

Dept: .....

Phone No: ..... Fax No: .....

E-mail Address:  
.....

Institutional IP Address Ranges (optional, attach further sheet if required):  
.....

**Invoice address for the Institution:**

.....  
.....  
.....  
..... Postcode.....  
.....

**Purchase order**

**no:** .....

Please return one signed copy of this agreement to:

EDINA	URL: <a href="http://edina.ac.uk">http://edina.ac.uk</a>
Causewayside House	Tel: 0131 650 3302
160 Causewayside	Fax: 0131 650 3308
Edinburgh EH9 1PR	Email: <a href="mailto:edina@ed.ac.uk">edina@ed.ac.uk</a>

Note: Please retain a copy for institutional records

## **SUB-LICENCE DATA PROTECTION ACT STATEMENT**

EDINA is a JISC National Data Centre

EDINA is subject to and complies with the requirements of the Data Protection Act 1998. EDINA will use the information provided on this Sub-Licence Agreement form for:

- Administration of your subscription to this online resource
- Sending you EDINA service information
- Advising you about forthcoming training or other events

Site representative email will be added to a service-specific mailing list and a JISCmail list for all EDINA site representatives.

Contact details of site representatives are made available **ONLY** to members of your institution or organisation as necessary

NOTE: any changes to these contact details must be notified to the EDINA helpdesk - [edina@ed.ac.uk](mailto:edina@ed.ac.uk)