

GROUNDWATER DATA USE AND SHARING AGREEMENT

THIS AGREEMENT (“**Agreement**”) dated the ___ day of _____, 20___ (the “**Effective Date**”)

BETWEEN:

His Majesty the King in Right of the Province of British Columbia, as represented by the Minister of Water, Land and Resource Stewardship (the “**Province**”)

AND:

_____ (the “**Data Provider**”)

WHEREAS:

- A. The Province maintains a database (the “**GWELLS Database**”) of groundwater well and aquifer data derived from various sources (the “**Groundwater Data**”) as well as records, reports and other documents provided to it as “**government water records**” pursuant to the *Water Sustainability Act*.
- B. The Groundwater Data and other government water records listed in Schedule A (the “**Provided Materials**”) have been provided to the Province by the Data Provider and are, or will be, held in the GWELLS Database.
- C. As part of its efforts to improve the collective understanding of groundwater resources in British Columbia (the “**Project**”), and in accordance with its open data policy, the Province gives or intends to give the public free access to, and broad rights to use, certain Groundwater Data and other government water records held in the GWELLS Database (the “**Published Materials**”).
- D. The Data Provider and the Province wish to document in this Agreement the terms and conditions relating to the inclusion of the Provided Materials as part of the Published Materials.

NOW THEREFORE in consideration of the Data Provider’s ability to participate in the Project and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each party), the parties agree as follows:

1. The Data Provider hereby grants to the Province:
 - (a) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to exercise, in respect of the Provided Materials, all of the rights set out in the *Copyright Act* (Canada), including the right to use and distribute the Provided Materials as part of the Published Materials; and
 - (b) the right to sublicense any or all of the rights granted to the Province under section 1(a) to third parties (“**Data Users**”) by way of the Province’s “Open Government Licence” (“**OGL**”), as may be amended by the Province from time to time (a current copy of the material terms of which is attached as Schedule “B”).
2. The Data Provider agrees that, notwithstanding the Effective Date of this Agreement, the rights granted in section 1 become effective for any and all of the Provided Materials immediately upon the Province’s receipt of them.
3. Any modifications made to, or derivative works made from, the Provided Materials by the Province under this Agreement, or by any Data Users in accordance with the OGL, will be owned by the maker of such modification(s) or derivative work(s).

4. The parties acknowledge and agree that:
 - (a) for the purposes of this Agreement, the Data Provider is providing the Provided Materials “as is”, without warranties or representations either express or implied with respect to their accuracy, completeness, merchantability or fitness for a particular purpose, and the Province will, in turn, make them available to the Data Users in accordance with the terms of the OGL;
 - (b) neither party will be liable to the other for any damages, including any loss of profits, loss of savings or other incidental or consequential damages arising out of a Data User’s use of or inability to use the Provided Materials; and
 - (c) the Province will direct any information requests regarding the Provided Materials to the Data Provider.

5. The Data Provider represents, warrants and agrees that:
 - (a) it has all rights necessary for it to enter into this Agreement and to grant the license set out in section 1:
 - (i) as the owner of all rights, including intellectual property rights, in the Provided Materials, and/or
 - (ii) with the express authority of any third-party owner(s) of any such rights;
 - (b) to the best of its knowledge, apart from any third party(ies) contemplated under subsection 5(a)(ii), the Provided Materials do not contain any other third party’s proprietary information;
 - (c) the Provided Materials are being licensed for inclusion with the Published Materials without remuneration from the Province or any Data Users;
 - (d) the Province may incorporate and retain, in perpetuity, all or any of the Provided Materials in the GWELLS Database or any other database or data repository maintained by it; and
 - (e) if the Province should require that any author(s) of the Provided Materials waive their moral rights in the Provided Materials, the Data Provider will make best efforts to assist with obtaining such waiver(s).

6. No partnership, joint venture or agency will be created, nor will any regulatory or other approvals or authorizations be provided, or be deemed to be created or provided, by this Agreement or by any actions of the parties under this Agreement.

7. The Data Provider must indemnify and save harmless the Province and the Province’s employees and agents from any loss, claim (including any claim of infringement of third-party intellectual property rights), damage award, action, cause of action, cost or expense that the Province or any of the Province’s employees or agents may sustain, incur, suffer or be put to at any time (each a “**Loss**”) to the extent the Loss is directly or indirectly caused or contributed to by:
 - (a) any act or omission by the Data Provider or by any of the Data Provider’s agents, employees, officers, directors or subcontractors in relation to the Provided Materials; or
 - (b) any representation or warranty of the Data Provider being or becoming untrue or incorrect.

8. This Agreement captures the entire agreement between the parties with respect to its subject matter and any amendments to it must be in writing and signed by both parties.

9. This Agreement will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

10. Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further acts, documents and assurances necessary for the better or more perfect performance of the terms and conditions of this Agreement.

11. This Agreement will be governed by and interpreted in accordance with the laws applicable in British Columbia.

12. This Agreement may be executed in separate counterparts, and delivered by any method agreed to by the parties, and each such executed counterpart will be deemed an original.

IN WITNESS WHEREOF the parties have executed this Agreement to be made effective as of the Effective Date.

SIGNED AND DELIVERED on behalf of
the Data Provider by its authorized signatory(ies):

[signature(s)]

[print name(s)]

[title(s)]

SIGNED AND DELIVERED on behalf of His Majesty the King
in Right of the Province of British Columbia by the
authorized representative of the
Minister of Water, Land and Resource Stewardship:

[signature]

[print name]

[title]

Schedule A

**Reports of Documents containing Professional Interpretations (Opinions and Estimates) of
Groundwater Data collected from Well(s) or Aquifer(s) in British Columbia**

Data Provider (Signee of the Data Sharing Agreement providing the materials listed below):

Name: _____

Agency/Company: _____

Title/position: _____

To be completed by the Province:

Tested Well Tag Number(s): _____.

Aquifer Tested (optional): _____.

Water Licensing File Number (if licensing required under *Water Sustainability Act* and, if not, optional):

_____.

Provided Materials:

Author: _____.

Prepared for (Proponent): _____.

Title: _____

_____.

Date: _____.

Author: _____.

Prepared for (Proponent): _____.

Title: _____

_____.

Date: _____.

Author: _____.

Prepared for (Proponent): _____.

Title: _____

_____.

Date: _____.

Schedule B
Material Terms of the
Open Government Licence - British Columbia

Using Information under this licence

1. Use of any Information indicates your acceptance of the terms below.
2. The Information Provider grants you a worldwide, royalty-free, perpetual, non-exclusive licence to use the Information, including for commercial purposes, subject to the terms below.

You are free to:

3. Copy, modify, publish, translate, adapt, distribute or otherwise use the Information in any medium, mode or format for any lawful purpose.

You must, where you do any of the above:

4. Acknowledge the source of the Information by including any attribution statement specified by the Information Provider(s) and, where possible, provide a link to this licence.

If the Information Provider does not provide a specific attribution statement, or if you are using Information from several Information Providers and multiple attributions are not practical for your product or application, you must use the following attribution statement:

Contains information licensed under the Open Government Licence – British Columbia.

5. The terms of this licence are important, and if you fail to comply with any of them, the rights granted to you under this licence, or any similar licence granted by the Information Provider, will end automatically.

Exemptions

6. This licence does not grant you any right to use:
 - a. Personal Information;
 - b. Information or Records not accessible under the Freedom of Information and Protection of Privacy Act (B.C.);
 - c. third party rights the Information Provider is not authorized to licence;
 - d. the names, crests, logos, or other official marks of the Information Provider; and
 - e. Information subject to other intellectual property rights, including patents, trademarks and official marks.

Non-endorsement

7. This licence does not grant you any right to use the Information in a way that suggests any official status or that the Information Provider endorses you or your use of the Information.

No warranty

8. The Information is licensed “as is”, and the Information Provider excludes all representations, warranties, obligations, and liabilities, whether express or implied, to the maximum extent permitted by law.

9. The Information Provider is not liable for any errors or omissions in the Information, and will not under any circumstances be liable for any direct, indirect, special, incidental, consequential, or other loss, injury or damage caused by its use or otherwise arising in connection with this licence or the Information, even if specifically advised of the possibility of such loss, injury or damage.

Governing Law

10. This licence is governed by the laws of the province of British Columbia and the applicable laws of Canada.

11. Legal proceedings related to this licence may only be brought in the courts of British Columbia.

Definitions

12. In this licence, the terms below have the following meanings:

“Information” means information resources or Records protected by copyright or other information or Records that is are offered for use under the terms of this licence.

“Information Provider” means Her Majesty the Queen in right of the Province of British Columbia.

“Personal Information” has the meaning set out in Schedule 1 of the Freedom of Information and Protection of Privacy Act (B.C.).

“Records” has the meaning set out in section 29 of the Interpretation Act (B.C.).

“You” means the natural or legal person, or body of persons corporate or incorporate, acquiring rights under this licence.

Versioning

13. This is version 2.0 of the Open Government Licence for Government of British Columbia Information. The Information Provider may make changes to the terms of this licence from time to time and issue a new version of the licence. Your use of the Information will be governed by the terms of the licence in force as of the date you accessed the Information.