

## **LICENCE FOR ACCESS TO DATA AVAILABLE FROM THE EUROPEAN BUTTERFLY MONITORING SCHEME (eBMS)**

BEFORE PROCEEDING PLEASE READ THE TERMS OF THIS AGREEMENT ("LICENCE AGREEMENT") CAREFULLY. IF YOUR REQUEST FOR DATA IS APPROVED THEN THE DATA WILL BE SUPPLIED TO YOU AND YOU WILL BE LICENSED TO USE THE DATA ON THE CONDITION THAT YOU ACCEPT ALL THE TERMS CONTAINED IN THIS LICENCE AGREEMENT.

BY SIGNING THIS LICENCE AGREEMENT WHERE INDICATED, YOU ARE CONFIRMING YOUR ACCEPTANCE OF THE TERMS OF THIS LICENCE AGREEMENT. SUCH ACCEPTANCE IS EITHER ON YOUR OWN BEHALF OR ON BEHALF OF ANY CORPORATE ENTITY OR PARTNERSHIP SPECIFIED IN YOUR DATA REQUEST.

The European Butterfly Monitoring Scheme (eBMS) comprises a collation of national Butterfly Monitoring Schemes datasets managed by the Natural Environment Research Council (acting through Centre for Ecology & Hydrology (CEH)) to form a European Butterfly Monitoring Scheme (eBMS) In order to facilitate research. The eBMS is jointly sponsored by the Natural Environment Research Council (acting through Centre for Ecology & Hydrology (CEH)), Butterfly Conservation UK, Helmholtz-Zentrum für Umweltforschung GmbH – UFZ, De Vlinderstichting, Catalonia BMS, Finnish Environment Institute (SYKE) and Butterfly Conservation Europe (BCE).

Your use of information provided under the terms of this Licence Agreement is at your own risk. Please read any warnings given about the limitations of the information.

### **1 DEFINITIONS**

"eBMS" means the European Butterfly Monitoring Scheme a scheme jointly sponsored by the Natural Environment Research Council (acting through Centre for Ecology & Hydrology (CEH)), Butterfly Conservation UK, Helmholtz-Zentrum für Umweltforschung GmbH – UFZ, De Vlinderstichting, Catalonia BMS, Finnish Environment Institute (SYKE), Butterfly Conservation Europe (BCE).

"Data" means the European Butterfly Monitoring Scheme (eBMS) data described in the Data Request Form.

"Data Provision Agreement" means the agreement between the eBMS sponsors setting out the terms which shall govern the relationship between the eBMS sponsors, including their respective obligations and rights and the collation by CEH of the national Butterfly Monitoring Schemes datasets to form a European Butterfly Monitoring Scheme (eBMS) in order to facilitate research.

"Data Request Form" means the data request form provided in Appendix 1 of this licence.

"Licensor" means Centre for Ecology & Hydrology (CEH), a component part of the Natural Environment Research Council (NERC).

"National BMS Co-ordinators" or "NCs" means the national coordinators of Butterfly Monitoring Schemes which includes the Natural Environment Research Council (acting through Centre for Ecology & Hydrology (CEH)), Helmholtz-Zentrum für Umweltforschung GmbH - UFZ, De Vlinderstichting, Catalonia BMS, Finnish Environment Institute, Butterfly Conservation Europe.

"You" or "Licensee" means either (a) the individual accepting the terms of this licence on their own behalf, or (b) the corporate entity or partnership on whose behalf those terms are accepted.

### **2 GRANT OF LICENCE**

By supplying the Data to the Licensee under the terms of this agreement the Licensor grants to the Licensee a non-exclusive, non-transferable, royalty free licence to use the Data, providing the use falls within the permitted use set out below and for no other purpose. Your licence does not permit You to sub-license for any purpose.

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Data will only be provided upon the completion of the supplied Data Request Form in addition to a signed copy of this Licence Agreement and subject to approval by the relevant National BMS Co-ordinators.

### **3 PERMITTED USE**

- 3.1 Data are provided solely for the use(s) described in the Data Request Form and may not be used for any other purpose without prior permission from the eBMS.
- 3.2 Subject to Clauses 5.3, 5.4, 5.5, 5.6 and 6.2, You may disseminate publications and reports based upon the Data to third parties, including to third party internet sites.
- 3.3 The eBMS recognises that it is in the nature of academic research that unforeseen results require investigation with unplanned further analysis. However, you must seek permission from the eBMS before undertaking any analysis other than that detailed in your Data Request Form and governed by this Licence Agreement.
- 3.4 The Data may be entered into a computer database or geographical information system (or similar) but only as part of the specified uses detailed in your Data Request Form. Please ensure that your description of the intended uses of the Data includes such information.

### **4 RESTRICTIONS ON USE**

- 4.1 You may not rent, lease, sell, sublicense or otherwise distribute the Data to a third party without written permission from the eBMS. If such data transfer forms part of your intended use of the Data, please ensure that this is detailed adequately in the Data Request Form.
- 4.2 You may not assign or transfer this Licence Agreement or any rights under it.
- 4.3 You may not use or attempt to use any of the data/information provided to deliberately damage the natural environment or make the information available to other(s) to do this;

### **5 UNDERTAKINGS**

- 5.1 You undertake to hold all data and all other information relating to the Data confidential and not at any time disclose the same, whether directly or indirectly, to any third party without the consent of the Licensor.
- 5.2 The Licensor undertakes to provide you with contact details for the National BMS Co-ordinators relevant to your data request on provision of Data.
- 5.3 You undertake to involve the relevant National BMS Co-ordinators in the use of their data in any scientific papers or other output and provide regular updates on progress of analyses.
- 5.4 You undertake to offer co-authorship to the relevant National BMS Co-ordinators as well as members from all organisations contributing to the co-ordination of a national BMS and intellectual input into the drafting of any scientific publications, conference presentations or posters resulting from use of the Data governed by this Licence Agreement.
- 5.5 You undertake to inform co-authors of the submission and revision process so that they can also comment on revised versions of manuscripts and remain fully informed of progress.
- 5.6 You undertake to report the realized use of the Data in publications to eBMS and to the National BMS co-ordinators involved and provide an electronic copy of any publications to the eBMS.
- 5.7 You undertake to store the Data in such a way that they can be accessed and used only in accordance with the terms of the Licence Agreement.
- 5.8 You undertake to ensure that all persons to whom You make the Data accessible are aware of the limitations placed upon the use of the Data by this Licence Agreement, and ensure that

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such persons comply with all the restrictions placed upon the use of and access to the Data as set out in this Licence Agreement.

### **6 OWNERSHIP**

- 6.1 The Licensor and/or its partners from the Data Provision Agreement who provide the data retain(s) ownership of the Data and related documentation, which are also protected under applicable copyright and database laws.
- 6.2 For use of the Data in scientific and/or academic publications, accepted scientific referencing conventions will apply and You will act reasonably in carrying out such referencing and will including in any publication such acknowledgment and/or citation text as may be provided to you by the eBMS or National BMS Co-ordinators from time to time.

### **7 WARRANTY**

- 7.1 Data may have been transcribed from analogue to digital format, or may have been acquired by means of automated measuring techniques. Although such processes are subjected to quality control to ensure reliability where possible, some data may have been processed without human intervention and may as a consequence contain undetected errors.
- 7.2 The Licensor gives no warranty as to the accuracy or completeness of the Data, including in the form in which they are cached or downloaded to your computer, as they may be affected by on-line conditions over which the Licensor has no control.
- 7.3 The data, information and related records supplied by the Licensor should not be taken as a substitute for specialist interpretations, and /or professional advice. You must seek professional advice before making technical interpretations on the basis of the materials provided.
- 7.4 The Licensor does not warrant that the Data will meet your requirements or that its operation will be uninterrupted or error free. This licence agreement does not affect your statutory rights.

### **8 LIABILITY**

- 8.1 All guarantees, representations and warranties of any kind, whether express or implied, including, without limitation, the implied warranties of satisfactory quality, merchantability and fitness for a particular purpose or ability to achieve a particular result are hereby excluded, so far as such exclusion or disclaimer is permitted under the applicable law. You assume the entire risk as to the quality and performance of the Data. Should the Data prove defective, You (and not the Licensor) assume the entire cost of all necessary servicing or correction.
- 8.2 In no event shall the Licensor be liable for any damages, including loss of business, loss of opportunity, loss of data, loss of profits or for any other indirect or consequential loss or damage whatsoever arising out of the use of or inability to use the Data, even if the Licensor has been made aware of the possibility of such damages.
- 8.3 The Licensor accepts no liability for any loss or damage which may be caused by the condition of the file in which the information is provided and the Licensee is expected to operate suitable anti-virus software before loading it into its computer system. The Licensee also being responsible for ensuring that the form of the information received is compatible with its computer system and any other data with which the information is to be used.
- 8.4 Nothing in this Licence Agreement shall exclude or limit the liability of the Licensor or the Licensee for fraudulent misrepresentation or for death or personal injury resulting from the negligence of the Licensor or the Licensee.

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### **9 DATA PROTECTION**

- 9.1 The Licensor will treat any personal information provided or obtained, in accordance with the provisions of the Data Protection Act of 1998 of the United Kingdom of Great Britain and Northern Ireland.
- 9.2 Any personal information provided or obtained shall be used only for the purposes of providing the Data to the Licensee, for communication relating to updates and amendments, relating to the Licensor's products or services, and for system administration of the web server, unless otherwise agreed by the Licensee.
- 9.3 The Licensor will on request, delete or remove any personal information held from a Licensee.

### **10 TERMINATION**

- 10.1 The Licensor may terminate this Licence Agreement by providing the Licensee with 30 days notice of such termination.
- 10.2 The Licence Agreement will terminate automatically if any of its terms are breached by the Licensee.
- 10.3 Upon termination all rights You have to use the Data will cease and You must destroy or delete the Data (including partial or modified versions and datasets derived from the Data) and all copies from all storage media in your control.
- 10.4 Clauses 1, 7, 8, 10.3 & 13 will survive termination of this agreement.

### **11 SEVERABILITY**

If any provision of this licence agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this licence agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

### **12 ENTIRE AGREEMENT**

This licence agreement contains the entire agreement between parties relating to the subject matter and supersedes all proposals, representations, understandings and prior agreements, whether oral or written, and all other communications between parties relating to that subject matter.

### **13 GOVERNING LAW AND JURISDICTION**

This agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

### **14 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

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I HAVE READ THE LICENCE AGREEMENT ABOVE AND AGREE WITH ITS TERMS AND  
CONDITIONS

**Signed :** ..... **Date:** .....

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**APPENDIX 1**

**DATA REQUEST FORM**

Please complete this form to clarify the nature of your request. The request will then be considered against our access policy and in conjunction (as necessary) with partner organisations.

|          |                       |
|----------|-----------------------|
| Name:    | Company/Organisation: |
| Project: |                       |
| Address: | Phone:                |
|          | Fax:                  |
|          | Email:                |

Please outline the type of data (counts, indices, phenology) required (including species, geographical area, temporal scale and date period), the reason for the request and the uses to which the data will be put (including any other parties involved and any planned changes in the format of the data e.g. entry into a database or GIS). Continue on an additional sheet if necessary:

**Date by which data is required (subject to agreement) .....**

**Signed : ..... Date: .....**