



**Consumer
Data Right**

Consumer Data Right Trade Mark Licence Agreement

An Agreement

Between

**The Licensor
(the Australian Competition and Consumer
Commission)**

And

Licensee

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Parties

Australian Competition and Consumer Commission of Canberra, ACT (**Licensor**)

The Licensee (the person meeting the definition in clause 1)

Background

- A The Licensor is the owner of the CDR Trade Mark.
- B The Licensor agrees to grant a licence to the Licensee to use the CDR Trade Mark for particular processes that the Licensee is required to undertake in accordance with the Consumer Data Rules, subject to the terms of this Licence Agreement.
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Agreed terms

1 Definitions

1.1 Definitions

In this Licence Agreement these terms have the following meanings:

Accredited Person	A person who is accredited under subsection 56CA(1) of the Competition and Consumer Act.
Brand Guidelines	means <i>Consumer Data Right Brand Guidelines for Participants</i> , as updated from time to time and described in Item 2 of the Schedule .
Business Day	A day which is not a Saturday, Sunday or bank or public holiday in Melbourne, Australia.
CDR consumer	The meaning given by subsection 56AI(3) of the Competition and Consumer Act.
CDR data	The meaning given by subsection 56AI(1) of the Competition and Consumer Act.
CDR Trade Mark	The Consumer Data Right trade mark the subject of registration number 2042059, as detailed in Item 1 of the Schedule .
Competition and Consumer Act	means <i>Competition and Consumer Act 2010 (Cth)</i> .
Consumer Data Rules	The rules made by the Licensor by legislative instrument under section 56BA of the Competition and Consumer Act.

Data Holder	The meaning given by subsection 56AJ(1) of the Competition and Consumer Act.
Force Majeure	The meaning given to it in clause 10 .
Infringement Claim	The meaning given to it in clause 7.5 .
Intellectual Property Rights	includes: <ul style="list-style-type: none"> a. all copyright (including rights in relation to phonograms and broadcasts); b. all rights in relation to inventions, plant varieties, Trademarks (including service marks), designs and circuit layouts; and c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include: <ul style="list-style-type: none"> d. moral rights; e. the non-proprietary rights of performers; or f. rights in relation to confidential information;
Licence	The meaning given to it in clause 2.1 .
Licence Agreement	This agreement between the Parties.
Licensed Purpose	The Licensed Purpose: <ul style="list-style-type: none"> a. in relation to a Licensee that is an Accredited Person, means the purpose of asking a CDR consumer to give consent for it to collect and use CDR data; and/or b. in relation to a Licensee that is a Data Holder, means the purpose of asking a CDR consumer to give authorisation for it to disclose CDR data. <p><i>[Note: Please see Items 2 and 3 of the Schedule for further details of how the CDR Trade Mark can be used under this Licence Agreement].</i></p>
Licensee	A person who is entitled to use the CDR Trade Mark in accordance with this Licence Agreement.
Territory	The territory is the world.
Term	The duration of the Licence specified in clause 9 of this Licence Agreement.
Trademarks	Trade names, trademarks, service marks, trade dress, logos or other identifying indicia.

2 Licence

2.1 Grant of Licence

Subject to this Licence Agreement, including but not limited to clauses 2, 3 and 4, the Licensor grants to the Licensee a non-exclusive, non-transferable licence (**Licence**) to use the CDR Trade Mark within the Territory, for the Term, solely for the Licensed Purpose and in accordance with any requirements in the Consumer Data Rules.

2.2 Limitations of Licence

- (a) The only rights granted to the Licensee in respect of the CDR Trade Mark are those expressly provided for in this Licence Agreement. No other licence or interest is granted, either expressly or by implication, by estoppel or otherwise.
- (b) Except where expressly stated in this Licence Agreement, to the extent permitted by law, any statutory or common law rights of authorised users are hereby excluded.

2.3 Sublicensing

- (a) The Licensee has no right to sublicense any right to use the CDR Trade Mark (or any part of it) without the Licensor's prior written consent.
- (b) The Licensor has an absolute discretion to give or withhold consent.
- (c) The Licensee is liable for the conduct of its sublicensee that is prohibited under this Licence Agreement, and is liable for any sublicensee conduct that would have constituted breach of this Licence Agreement if it had been engaged in by the Licensee.

2.4 No fees for Licence

No fees, royalties or other payments are payable by the Licensee to the Licensor for the Licence.

2.5 Compliance with Consumer Data Rules and relevant standards

The Licensee must comply with:

- (a) the Consumer Data Rules as they relate to the CDR Trade Mark, as updated from time to time;
- (b) any data standards relevant to the use of the CDR Trade Mark made under section 56FA of the Competition and Consumer Act from time to time; and
- (c) any reasonable requirement relevant to the use of the CDR Trade Mark notified from time to time by the Licensor.

3 Use of the CDR Trade Mark

The Licensee must use the CDR Trade Mark only:

- (a) in the form set out in **Item 2 of the Schedule** and must not alter the appearance of the CDR Trade Mark in any way;
- (b) in relation to the services specified in **Item 3 of the Schedule** and subject to any other restrictions in the Licence;

- (c) in accordance with any guidelines on the use of the CDR Trade Mark, including the Brand Guidelines, that may be issued by the Licensor from time to time;
- (d) in accordance with any reasonable directions that may be given in writing by the Licensor from time to time.

4 Quality control

4.1 Samples

The Licensor may, on the giving of reasonable notice, require the Licensee to submit to the Licensor samples of the Licensee's use of the CDR Trade Mark (including in any promotional material and/or advertising material produced) to allow the Licensor to determine whether the Licensee's use of the CDR Trade Mark complies with the terms and conditions of this Licence Agreement.

4.2 Remediation

If the Licensor determines that the Licensee's use of the CDR Trade Mark does not comply with this Licence Agreement, the Licensor will, in a written notice to the Licensee, specify:

- (a) the details of the non-compliance;
- (b) measures that the Licensor requires the Licensee to take to rectify or otherwise address the non-compliance; and
- (c) a period within which the measures specified under **clause 4.2(b)** are to be taken.

5 Ownership of CDR Trade Mark

5.1 Ownership

- (a) The Licensee acknowledges that all right, title and interest in and to the CDR Trade Mark and the copyright subsisting in it, within Australia and throughout the world, vests absolutely in the Licensor.
- (b) The Licensee must not take any action during the term of this Licence Agreement that is inconsistent with, or would challenge or undermine, the Licensor's ownership of the CDR Trade Mark (or any related or similar mark) or the copyright subsisting in it.

5.2 No other interest

Nothing in this Licence Agreement gives the Licensee any interest in the CDR Trade Mark (or any part of it) or the copyright subsisting in it, other than the right to use the CDR Trade Mark in accordance with this Licence Agreement.

5.3 No challenge

The Licensee must not, either directly or indirectly:

- (a) challenge the registration of the CDR Trade Mark; and
- (b) challenge any right, title or interest of the Licensor in and to the CDR Trade Mark (or any related or similar mark);

nor assist any other person to do so.

5.4 Goodwill and reputation

All goodwill and improved reputation in respect of the CDR Trade Mark generated by the Licensee's use of the CDR Trade Mark inures to the Licensor's sole benefit.

6 Preserving value of CDR Trade Mark

6.1 Conduct of Licensee

The Licensee must not, by any act or omission, use the CDR Trade Mark in any manner that tarnishes, degrades, disparages or reflects adversely on the Licensor, or on the CDR Trade Mark, in any material respect.

7 Protection of licensed Intellectual Property Rights

7.1 Maintenance of Intellectual Property Rights

- (a) The Licensor maintains sole control and discretion over the prosecution and maintenance of the CDR Trade Mark, subject to this **clause 7**.
- (b) The Licensor will use commercially reasonable efforts to prosecute and maintain the registration of the CDR Trade Mark when economically justifiable, at the Licensor's expense.

7.2 Protection of Intellectual Property Rights

- (a) The Licensor has the sole right, but not obligation, to bring, at its own expense, and control, any suits against any unauthorised use, infringement, misappropriation, or other breach of the CDR Trade Mark (or any related or similar mark).
- (b) The Licensee agrees to cooperate with the Licensor in any litigation or other enforcement action that the Licensor may undertake to enforce or protect the CDR Trade Mark (or any related or similar mark). The Licensee has no right to participate or be represented.
- (c) The Licensee has no right to make a claim of any kind against the Licensor based on or arising out of the Licensor's handling of, or decisions concerning, any such litigation, action, suit, proceeding, settlement, or compromise, and irrevocably releases the Licensor from any such claim.
- (d) The Licensee may not take any suits or action against any party alleged to be misusing the CDR Trade Mark (or any related or similar mark) without the prior written consent of the Licensor and subject to any conditions that the Licensor deems fit.

7.3 Notification of infringement

The Licensee must promptly notify the Licensor and provide to the Licensor relevant background facts on becoming aware or suspicious of:

- (a) any registrations of, or applications for registration of, marks that do or may conflict with the CDR Trade Mark (or any related or similar mark); and
- (b) any infringement, misappropriation, imitation, illegal use or misuse of the CDR Trade Mark (or any related or similar mark).

7.4 No assurance of protection

The Licensee acknowledges that, except as set out in this Licence Agreement, the Licensor makes no representation or warranty regarding Intellectual Property Rights protection in respect of the CDR Trade Mark.

7.5 Defence against Infringement Claims

- (a) Subject to this **clause 7.5**, the Licensor and the Licensee must cooperate to diligently defend the Licensee against any third party infringement claims, demands or actions alleging that the Licensee's use of the CDR Trade Mark infringes the rights of a third party (**Infringement Claim**).
- (b) The Licensee must promptly inform the Licensor of any Infringement Claim against the Licensee.
- (c) If an Infringement Claim challenges the Licensor's rights in the CDR Trade Mark, the Licensor has the option to defend the Infringement Claim at its own expense. The Licensee agrees to cooperate with the Licensor with respect to the defence of the Infringement Claim.
- (d) The Licensee has the right to participate and be represented with respect to any Infringement Claim by its own counsel provided that the Licensor gives its prior written consent and the parties agree on payment of costs and any settlement arrangements arising in respect of such an Infringement Claim.
- (e) The Licensee has no right to and shall not make a claim of any kind against the Licensor based on or arising out of the Licensor's handling of or decisions concerning any such Infringement Claim or related settlement or compromise, and irrevocably releases the Licensor from any such claim.
- (f) If:
 - (i) the Licensor does not exercise the option in **clause 7.5(c)**; or
 - (ii) the Infringement Claim does not challenge the Licensor's rights in the CDR Trade Mark,the Licensee is responsible for defending or otherwise resolving the Infringement Claim. However, the Licensor may intervene in the defence of the Infringement Claim at any time at its own expense.
- (g) The Licensor has the right to approve any settlement that involves the CDR Trade Mark, and may withhold consent in its absolute discretion.
- (h) Except as otherwise provided in this **clause 7.5**, each party must bear the costs, fees and expenses it incurs in complying with this clause.

8 Representations and warranties

8.1 Licensor representations and warranties

The Licensor represents to the Licensee that, to the best of the Licensor's knowledge:

- (a) the Licensor:
 - (i) is the owner of the CDR Trade Mark; and
 - (ii) has the right to grant the licences set out in this Licence Agreement;
- (b) before the date of this Licence Agreement, no person has asserted that the Licensor's use of the CDR Trade Mark infringes that person's own rights; and
- (c) the Licensee's use of the CDR Trade Mark within the scope of the Licence does not infringe the Intellectual Property Rights of any person.

9 Term and termination

9.1 Term

- (a) The term of this Licence Agreement commences on the date on which the Licensee agrees to be legally bound by this Licence Agreement, and continues subject to the Licensee complying with this Licence Agreement.
- (b) In the case of an Accredited Person, this Licence Agreement will automatically terminate if the person's accreditation is revoked, suspended or surrendered.

9.2 Termination

Unless otherwise agreed in writing by the Licensor, the Licensee will not be permitted to use the CDR Trade Mark, and this Licence Agreement will automatically terminate, if the Licensee:

- (a) breaches any of the Licensee's obligations under this Licence Agreement; and
- (b) the breach is not remedied within 14 Business Days after the Licensee receives written notice of the breach from the Licensor.

9.3 Effect of termination

Upon termination of this Licence Agreement:

- (a) the Licensee must within 20 Business Days (or such other period as agreed in writing with the Licensor) cease all use of the CDR Trade Mark in any manner whatsoever; and
- (b) the Licensee acknowledges that it will have no right to receive any compensation whatsoever from the Licensor in respect of the termination.

10 Force Majeure

- (a) **Force Majeure** means a circumstance beyond the reasonable direct or indirect control and without the fault or negligence of the party claiming force majeure, including accident, fire, explosion, epidemic, strike, lockout, labour conditions, civil

disturbance, riot, any act of God, act of war, terrorist incident, cyclone, flood, storm or earthquake.

- (b) Delay in or failure of performance by a party (other than the payment of money) does not constitute a breach of this Licence Agreement by that party if and to the extent that the delay or failure is caused by a Force Majeure, provided the party claiming Force Majeure:
 - (i) gives notice to the other party within 7 days of the occurrence of the Force Majeure providing details of the Force Majeure and its anticipated likely duration and effect; and
 - (ii) uses its best endeavours to resume fulfilling its obligations as promptly as possible and gives notice to the other party with written notice within 7 days of the cessation of the Force Majeure.
- (c) If a delay caused by Force Majeure continues for more than 28 days, either party may terminate the Licence evidenced by this document by giving 14 days' notice to the other parties.

11 Notices

11.1 General

A notice, demand, certification, process or other communication relating to this Licence Agreement must be in writing in English and may be given by an agent of the sender.

11.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current delivery address for notices;
- (c) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) emailed to the current email address for notices.

11.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially:

The Licensor	The Australian Competition and Consumer Commission
Delivery address:	23 Marcus Clarke Street Canberra ACT 2601
Postal address:	GPO Box 3131 Canberra ACT 2601
Email:	accc-cdr@accc.gov.au
Attention:	Consumer Data Right Branch

- (b) Each party may change its particulars for delivery of notices by written notice to each other party.

11.4 Communications by post

Subject to **clause 11.5**, a communication is given if posted:

- (a) within Australia to an Australian postal address, five Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting.

11.5 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

11.6 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Licence Agreement may be served by any method contemplated by this **clause 11** or in accordance with any applicable law.

12 General

12.1 Legal costs

Except as expressly stated otherwise in this Licence Agreement, each party must pay its own legal and other costs and expenses of performing its obligations under this Licence Agreement.

12.2 Amendment

This Licence Agreement may be varied or replaced by the Licensor giving written notice to the Licensee of not less than 14 days.

12.3 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this Licence Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right relating to this Licence Agreement.
- (c) No waiver by a party of a right relating to this Licence Agreement will be construed as a continuing waiver.

12.4 Rights cumulative

Except as expressly stated otherwise in this Licence Agreement, the rights of a party under this Licence Agreement are cumulative and are in addition to any other rights of that party.

12.5 Consents

Except as expressly stated otherwise in this Licence Agreement, a party may conditionally or unconditionally give or withhold any consent to be given under this Licence Agreement and is not obliged to give its reasons for doing so.

12.6 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this Licence Agreement and to perform its obligations under it.

12.7 Governing law and jurisdiction

- (a) This Licence Agreement is governed by and is to be construed in accordance with the laws applicable in the State of Victoria and the Commonwealth of Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria and in the Commonwealth of Australia and any courts which have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.

12.8 Assignment

- (a) The Licensee must not assign or deal with any right under this Licence Agreement without the Licensor's express prior written consent, which the Licensor may withhold at its absolute discretion.
- (b) Any purported dealing in breach of this **clause 12.8** is of no effect.

12.9 Severability

- (a) Subject to **clause 12.9(b)**, if a provision of this Licence Agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Licence Agreement.
- (b) **Clause 12.9(a)** does not apply if severing the provision:
 - (i) materially alters the:
 - (A) scope and nature of this Licence Agreement; or
 - (B) the relative commercial or financial positions of the parties; or
 - (ii) would be contrary to public policy.

12.10 Construction

Unless expressed to the contrary, in this Licence Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;

- (c) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) this or any other document includes the Licence Agreement as novated, varied or replaced and despite any change in the identity of the parties;
 - (vii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
 - (viii) this Licence Agreement includes all schedules and annexures to it; and
 - (ix) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this Licence Agreement;
- (g) if the date on or by which any act must be done under this Licence Agreement is not a Business Day, the act must be done on or by the next Business Day; and
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

12.11 Headings

Headings do not affect the interpretation of this Licence Agreement.

Schedule

Item 1 – CDR Trade Mark

A. TRADE MARK:



Trade mark registration number 2042059

In classes 35, 36, 38, 41 and 42 in respect of the registered services shown at paragraph B below.

B REGISTERED SERVICES

Class 35: Price comparison of goods and services; price analysis of goods and services; product comparison of goods and services; compilation and provision of price and feature information relating to the supply of consumer goods and services including insurance, utilities (being gas, electricity and water), telecommunication services and financial products; collection of information relating to energy pricing; collection of information relating to energy use; collection of information relating to banking product pricing; collection of information relating to banking product features; collection of information relating to telecommunications product pricing; collection of information relating to telecommunications product features; market analysis; market research data collection; economic forecasting; business project management; business management consultancy; computerised business information dissemination and retrieval services; online data processing services and data retrieval; management of communication networks; database management; product information services; provision of product information; advisory, information and consultancy services relating to all of the aforesaid services

Class 36: Provision of information, including online, in relating to financial services products; provision of financial information via an online calculator

Class 38: Provision of information, including online, in relation to telecommunications products

Class 41: Electronic publication of information on a wide range of topics, including on-line and electronic publication

Class 42: Provision of information in respect of energy prices and energy use; hosting of online calculators used to assist with calculating energy usage and estimated energy plan costs, telecommunications usage and estimated telecommunications plan costs and financial services plan costs

Item 2 – Form of use of the CDR Trade Mark

The form of use of the CDR Trade Mark is set out in the Consumer Data Right Brand Guidelines for Participants (**Brand Guidelines**), as updated from time to time.

A copy of the current version of the Brand Guidelines (or a link to the current version) will be provided to the Licensee.

The Licensor will provide the Licensee with 14 days' written notice of any updated version of the Brand Guidelines being published.

Item 3 – Services

The Services are those 'Registered Services' at Item 1 of the Schedule including publication and online publication of information (this includes price comparisons of goods and services) and collection and market analysis of information.

For the avoidance of doubt, dissemination or publication of promotional material or online promotional material relating to the above Services is permitted subject to such use falling within the Licensed Purpose.