DATABASE LICENCE

TERMS AND CONDITIONS

WHEREAS, Licensor has developed and is the keeper of a database hereinafter referred to as "Database" as described in the Agreement attached hereto and WHEREAS, Licensee desires to use the Database within its own organisation
IT IS HEREBY AGREED as follows:-

1. LICENCE

In consideration of the fee payment for the Database in the amount and frequencies indicated and for the purposes and uses specified in the Agreement, Licensor hereby grants to Licensee a limited non-exclusive non transferable revocable licence to use the Database for internal purposes by the Licensee's direct employees. Licensee shall not and shall not have the right to sell, assign, transfer, rent, lease, sublicense, lend, give or make available to others or otherwise transfer or dispose of the Database in its present form or as converted or modified by Licensee or Licensor, or make the Database available in any manner for use by any subsidiary Establishment of Licensee or by any other person, or firm, or customer. Licensee shall not reverse, decompile, disassemble or otherwise reverse engineer the whole or part of the Database nor modify, adapt or translate the Database in any way. Should the Licensee derive a new dataset in any way from the Database, the new dataset will be subject to the terms of this Agreement and should the Licensee wish to have use of the new dataset, the Licensee will require a valid licence from the Licensor. Furthermore the Licensee will not be entitled to sell, assign, transfer, rent, lease, sublicense, lend or make available to others (including but not limited to any subsidiary of the Licensee) or otherwise transfer or dispose of the new dataset. Licensee shall not engage in the development or marketing of a product or system commercially competitive with the Database at any time during the Licence Period.

2. PROPRIETARY RIGHTS AND CONFIDENTIALITY

The Database is a proprietary product of Licensor and is protected by Copyright law and Licensor reserves all rights of ownership and copyright and all other intellectual property rights in any version of the Database in any format or any medium.

Licensee agrees that, during the term of this Agreement and thereafter, the Database including any versions modified by Licensor or Licensee for use by Licensee and all other material, information and documentation made available to it by Licensor under this Agreement which is not already in the public domain or already lawfully in Licensee's possession are and shall remain the exclusive property of Licensor and are proprietary, and Licensee further agrees during the term of this Agreement and thereafter to maintain in confidence and not to disclose to any person, firm or company and to use its best efforts to prevent and protect the Database and all parts thereof and all such other material, know-how information and documentation from disclosure by its agents or employees to any person, firm or company. Licensee shall use the Database and all information and documentation only for the purpose of this Agreement. Neither the Database nor any parts thereof shall be copied or reproduced by Licensee for any purpose outside the scope of this Agreement, nor shall they be made available for use by Licensee's customers or any other person, firm or company without the prior written consent of Licensor.

Notwithstanding the above, Licensee may only make such copies of the Database as are necessary for back-up purposes. The Licensee agrees to maintain records of the number and location of all copies of the Database, made by them and all copies shall bear the words '© This is copyright material and may not be copied in whole or in part without the express written permission of Cranfield University.'

Should the Licensee print, produce or publish any documentation derived from any whole or part use of the Database, the documentation must bear the words 'Soils Data © Cranfield University (NSRI) and for the Controller of HMSO [Year]'.

3. TERM

The duration of this Agreement shall be for the Period stated in the Agreement unless sooner terminated in accordance with the provisions of this Agreement.

4. TERMINATION

(a) After delivery of the Database Licensee may terminate this Agreement at any time upon sixty (60) days written notice to Licensor. If Licensee decides to terminate, there is to be no refund of any part of the Licence fee payment.

(b) In the event that Licensee makes any use of the Database outside the rights granted hereunder or breaches any of the other agreements contained herein, Licensor shall give written notice to Licensee and if such default has not been remedied within thirty (30) days after such notice, Licensor may thereafter terminate this Agreement.

(c) Licensor shall have the right to terminate this Agreement forthwith without notice if Licensee becomes insolvent, compounds with its creditors, files a petition in bankruptcy, enters into liquidation, has a receiver appointed or has any distress or execution levied against it.

(d) Upon expiration or termination of this Agreement, the Database shall promptly be deleted from any files of Licensee and the copies taken for back-up purposes promptly be destroyed, Licensee shall make no further use of the Database. Licensee agrees to provide to Licensor written confirmation of the deletion and destruction of all copies.

5. TITLE

Legal title to the Database and any modifications or enhancements thereto made by Licensor shall at all times be vested in Licensor and legal title to reproductions, converted versions or duplications of the Database and any other supporting documentation and information delivered to Licensee shall remain vested in Licensor and shall be returned to Licensor upon termination of this Agreement.

6. RESPONSIBILITY AND LIABILITY

6.1 (a) Licensee shall not make nor permit to be made any publication involving use and development of the Database without the prior written consent of the Licensor.

(b) Licensee agrees and acknowledges that it retains full control over the use of the Database and any modifications or enhancements thereof, and, accordingly, that Licensee shall be solely responsible for any designs, systems, products or any use made of the Database.

(c) Licensor shall not be liable to the Licensee for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Licence Agreement, the Database, its use or otherwise, except that which is unlawful to exclude.

(d) Licensor expressly excludes liability for consequential loss or damage which may arise in respect of the Database, its use, the system or in respect of other equipment or property, or for loss of profit, business revenue, loss of contracts, goodwill or anticipated savings.

(e) Licensor accepts no liability for any design, system or use of any product resulting from the use of the Database and makes no warranty as to its completeness or accuracy nor that the Database is free of defects, error-free or is of a satisfactory quality.

(f)   Notwithstanding the above, nothing herein shall be deemed to restrict or exclude any liability of the Licensor for death or personal injury to the extent only that the same arises as a result of the negligence of Licensor, its employees, servants, agents or authorised representatives.

(g)   In the event that Licensee is not satisfied with the Database during a period of sixty (60) days from delivery, Licensee shall put any complaint in writing to Licensor. If the Licensor considers such complaint is reasonable the Licensor agrees to rectify or replace the Database or remedy any defect, whichever the Licensor deems to be appropriate. Licensor's decision shall be final and conclusive.

(h)   In the event that any limitation or provision contained in this Licence Agreement shall be held to be invalid for any reason and Licensor becomes liable for loss or damage that would otherwise have been lawful to exclude, the Licensor's entire liability whether in contract or in tort and whether or not attributable to negligence, shall be limited to £1,000,000 if arising out of or in connection with any damage to property of the Licensee or limited to the amount of the Licence Fee specified in the Agreement if arising out of or in connection with the defect in the Database or services supplied by the Licensor or any act omission neglect or default (whether or not the same constitutes a fundamental breach of contract) of the Licensor its servants or agents in the performance of this Agreement (including, without limiting the generality of the foregoing, breach of any condition or any warranty whether express or implied by statue common law or otherwise howsoever).

(i)   Licensee shall protect, indemnify, save harmless and defend Licensor from and against any and all liabilities, claims, demands, loss, costs, damages or expenses including legal fees, arising from any claim asserted against Licensor that is in any way associated with Licensee's use of the Database.

6.2 **Licensor gives no further warranty or representation as to the fitness of the Database or any part thereof nor as to its performance. The express warranties given by the Licensor in Clause 6.1 are given to the exclusion of all other warranties and conditions and representations whether express or implied or otherwise.**

7. WARRANTY OF RIGHT TO LICENCE
(a)   Licensor hereby warrants that it has the right to license the Database to Licensee. To the best of the Licensor's knowledge and belief the use of the Database and any other information provided to the Licensee does not infringe any third party copyright or any other intellectual property. Licensor agrees to indemnify and hold Licensee harmless from and against all, claims, damages, costs and expenses (but excluding consequential losses) resulting from or arising out of any breach of warranty set forth in this paragraph PROVIDED THAT in the event any such claim or right is asserted against Licensee, Licensee shall make no admissions without Licensor's prior written consent and shall give Licensor written notice of such fact within ten (10) working days. Licensor shall then have the option, at its discretion, of taking over the defence of any such claim.

(b)   If at any time the Licensor becomes aware that the Database and/or such other information provided hereunder or the use thereof infringes or is likely to infringe any third party right, Licensor shall at its discretion and expense modify, replace or withdraw all or part of the Database and/or such other information so as to avoid the infringement and Licensee shall forthwith correspondingly amend or withdraw any authorisation to others to use the Database and/or such other information or any part thereof.

8. NOTICE
Any notice or other communication given hereunder shall be in writing and mailed, if to Licensor, to Mr Malcolm Blott, Cranfield University, Cranfield, Bedfordshire, MK43 0AL and if to Licensee to the Contact named in the Agreement or to such other address as either party shall have previously designated by notice in writing. Such notice or communication shall be deemed delivered when sent by registered post or facsimile transmission and subsequently confirmed in writing.

9. ENTIRE AGREEMENT
This Agreement represents the entire Agreement between Licensor and Licensee and shall supersede all representations, agreements, statements and understandings made prior to the date of this Agreement whether oral or in writing other than those representations, agreements, statements and understandings which have been expressly incorporated into this Agreement.

10. CONDITIONS EXCLUDED
Except as stated herein all implied terms, conditions, statements or warranties, statutory or otherwise, as to
(i)   the satisfactory quality of the Database or
(ii) the fitness of the Database for any purpose whatsoever whether made known to the Licensor or not are hereby excluded from the Agreement.

11. UNCONTROLLABLE CIRCUMSTANCES
Licensor shall not be responsible for any failure on its part to fulfil any obligations to Licensee caused by events or circumstances outside Licensor's control.

12. MODIFICATIONS OF CONDITIONS
The terms and conditions of this agreement shall not be modified except in writing, signed by the parties, each by its duly authorised representatives.

13. NON-ASSIGNMENT
Licensee shall not assign this Agreement or any interest therein without the prior written consent of Licensor
14. NON-WAIVER
Failure to terminate this Agreement following a breach or other failure to comply shall not be deemed to be a waiver of a Party's defences rights or causes of action arising from such or any future breach or non-compliance. Nor shall failure on the part of either Party at the time or from time to time to enforce or to require the strict adherence and performance of any of the terms and conditions affect or impair its right to enforce such terms or conditions in any way.

15. HEADINGS AND SEVERABILITY
The clause headings are for convenience only and shall not affect their interpretation. If any part of this Agreement shall be held to be unenforceable to any extent, the remainder of the Agreement shall nevertheless remain in full force and effect.

16. SURVIVAL
The provision of the following clauses shall remain binding upon Licensee after the expiry or termination of this Agreement: 2, 5, 6, 10, 13, 17

17. GOVERNING LAW
This Agreement shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the jurisdiction of the Courts of England.