EEIO Data Licence Agreement

BACKGROUND

1. The Licensor is the owner of environmentally extended input-output (EEIO) emission factors for industries and commodities in New Zealand (the Data).
2. The Licensor agrees to grant a perpetual Licence to the Licensee to use the Data for the Permitted Purpose, subject to the terms of this Licence Agreement.
3. By downloading or using the Data, a legally binding agreement consisting of the terms and conditions of this EEIO Data Licence Agreement (Licence Agreement) is established between you (the Licensee) and thinkstep Ltd (company number: 2305528; NZBN: 9429032006445) (the Licensor).

AGREED TERMS

1. INTERPRETATION

(a) In this Agreement, the terms "We", "Us" and "Our" refers to thinkstep-anz. "You" or “Your” refers to any person who accesses and/or uses the Data, pursuant to this Agreement.
(b) A reference to a clause, paragraph or schedule is a reference to a clause or paragraph of or schedule to this Agreement.
(c) Headings are for convenience only and do not affect the interpretation.
(d) References to the parties include (insofar as is consistent with the provisions of this Agreement) each party’s personnel, agents, subcontractors, successors in title and permitted assignees.
(e) A reference to a person includes a company, any association of persons (whether incorporated or not), partnership, and local or governmental authority.

2. DEFINITIONS

In this Agreement these terms have the following meanings:
Auditor means any person who conducts an audit of someone else’s calculations based on the Data.
Business Day: a day which is not a Saturday, Sunday or public holiday in New Zealand.
Commercialise in respect of the Data or any Enhancement to the Data, means exploiting, selling and/or licensing the Data and/or any Material embodying the Data or Enhancement, or a product or service derived from or incorporating the Data or Enhancement. Commercialise includes Enhancing for a purpose other than the Permitted Purpose.
Confidential Information means all information (whether of a scientific, engineering, industrial, technical, business, financial nature or otherwise) communicated in whatever form, in relation to:
(a) the terms and contents of this Agreement;
(b) information relating to Our business or operations;
(c) information disclosed to You by Us in relation to the Data, and marked as confidential or proprietary;
(d) information which is by its nature confidential or You ought to know is confidential;
but does not include information, including any aggregated data calculated by Us, which is publicly known or becomes publicly known without a breach by You of Your obligations under this Agreement.
Data means environmentally extended input-output (EEIO) emission factors for industries and commodities in New Zealand as provided by thinkstep-anz, and updated from time to time.
Enhancement means any edit, alteration, modification, adaptation or development of the thinkstep-anz Data other than for the Permitted Purpose. Enhancement does not include reasonable adjustments for inflation, goods and services tax, or other minor modifications which are consistent with the Permitted Purpose.
Fee or **Licence Fee** means the fee payable by You to Us for access and use of the Data.
Intellectual Property Rights means all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets), know-how, and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields.
Licensee means the entity or individual registered with Us as the account holder, and identified on the invoice as the payor.
Licensee Account means the details of Your organisation, your contact details and any details You may be provided to access the Data from Our website. Your Licensee Account is established when you complete a registration form to access the Data and can be updated by contacting data@thinkstep-anz.com.
Licensor means thinkstep Ltd (company number: 2305528; NZBN: 9429032006445) of 11 Rawhiti Road, Pukerua Bay, Wellington 5026, New Zealand.

Loss means any loss, damage, liability, cost or expense (including legal expenses on a full indemnity basis) of any kind suffered or incurred or agreed to be paid by way of settlement or compromise.
Licence Owner or **Licensee** means entity which has purchased a Licence to use the Data, pursuant to the terms of this Agreement.
Material includes any data, information and other documents (including electronic documents) and software.
Permitted Purpose means the purpose of multiplying the emission factors contained in the Data by corresponding financial data to calculate greenhouse gas emissions, and expressly excludes any purpose associated with Enhancement or Commercialisation.
Personnel includes a party's officers, employees, agents, contractors, advisers and consultants.
Reasonable Amount means (as the context requires):

(a) an amount of Data consistent with enabling You to make efficient use of the Data for the Permitted Purpose, however it shall not exceed 20 data points in any one publication or disclosure; or
(b) an amount of Licensee support which shall not exceed 6 hours per Licence per year.

Term means the period of this agreement as specified in clause 9.
thinkstep-anz Brand means the thinkstep-anz name and logo, as set out in the Brand Guidelines supplied with the Data and updated from time to time.
Unauthorised Use means any:

(a) Use of the Data otherwise than in accordance with this agreement;
(b) creation of any Enhancement;
(c) commercialisation; or
(d) other accessing, downloading, copying, reproduction, storage, editing, alteration, modification, adaptation, development, reverse-engineering, decompiling, exploiting, selling, distributing, publishing or communicating to the public, or any other Use, of the thinkstep-anz Data, by the Licensee or any other person that is not expressly authorised by this agreement, and includes any reasonably suspected Unauthorised Use.

Use means access, download, use, evaluation, testing, copying, printing, and storage.

3. GRANT OF LICENCE AND INTELLECTUAL PROPERTY RIGHTS

3.1. **Ownership:** You acknowledge that the Data has commercial value, and that the Intellectual Property Rights in the Data (including any updates) remain vested in Us.
3.2. **Grant of License:** Subject to this Licence Agreement, including but not limited to this clause 3, We grant You a perpetual, non-exclusive, non-transferable Licence (License) to use the Data for the Permitted Purpose and for the duration of the Term. You acknowledge and agree that:
(a) the Licence to Use the Data does not include the right to Enhance or Commercialise the Data, and;
(b) we may grant further Licenses to any person in relation to the Data for any purpose.
3.3. **Limitations of License:** The only rights We grant to You in respect of the thinkstep-anz Data are those expressly provided for in this Licence Agreement. No other Licence or interest is granted, either expressly or by implication. You must:
(a) not do or cause anything in connection with the Data which may adversely affect of jeopardise Our rights, title and interest (including Intellectual Property Rights) in the Data;
(b) not remove, obscure or interfere with any notice, branding, warning or disclaimer incorporated into the Data;
(c) ensure that there is no Unauthorised Use of the Data by any of Your Personnel, including through the use of appropriate supervision, control and security measures. If You become aware of any Unauthorised Use (whether by Your Personnel or by a third party) You must immediately notify Us in writing and take steps, including as instructed by Us, to prevent further Unauthorised Use.
3.4. **Publication/Disclosure:** You may publish or disclose a Reasonable Amount of the Data provided such disclosure or reproduction:
(a) is on an occasional basis,
(b) is not made available in a separate downloadable format; and
(c) references and gives appropriate credit to Us as the owner of the Data.
3.5. **Sublicensing:** You have no right to sublicence any right to use the Data (or any part of it).
3.6. **Reservation of Rights:** We reserve all rights in the Data that are not expressly granted in this clause 3.

4. LICENCE AND FEE

4.1. **Licence Fee:** The annual Licence Fee payable per Licensee is the amount stated in Your invoice, payable in advance, within the number of days stated on Your invoice. Auditors are entitled to a free Licence and may not be issued with an invoice.

4.2. **Licence Owner:** A Licence Fee is payable for each entity which uses the Data to calculate emissions (Licensee). For the avoidance of doubt:

(a) a corporate entity which reports at group level on behalf of its subsidiaries is only required to purchase one License.

(b) a corporate entity with subsidiaries that report separately is required to purchase separate licences.

(c) individuals or organisations who use the Data on behalf of other entities (e.g., for client reporting) must obtain a Licence for each entity/client.

(d) auditors or reviewers contracted by You to review calculations based on the Data are covered by Your Licence and do not require their own Licence.

4.3. **Cancellation:** You may cancel the Licence at any time, however all Fees paid to Us for Data are non-refundable.

5. SUPPLY OF DATA

5.1. **Access:** We will supply You with access to the Data either through electronic mail or web link, at our sole discretion.

5.2. **Updates:** We may update the Data, at any time and for any reason, however nothing in this clause 5 creates any obligation on Us to update the Data on any date or at any regular interval. We will provide You with any minor updates to the Data that are released within 12 months from the date of Your invoice. A new set of emission factors for a new calendar or reporting year is excluded from these updates and will require a new agreement.

6. CONFIDENTIALITY

6.1. You acknowledge that:

(a) the Data is Confidential Information, and is valuable to Us because it has commercial value;

(b) we will suffer loss if You disclose, or permit the disclosure of any of the Confidential Information, other than for the Permitted Purpose; and

(c) the Confidential Information remains Our property at all times and You do not have any proprietary interest in the Confidential Information, including the Data.

6.2. Unless otherwise agreed in writing, You agree to:

(a) take all action necessary to maintain the confidential nature of the Confidential Information;

(b) not use any of the Confidential Information for any purpose other than the Permitted Purpose;

(c) apply at least the same security measures and degree of care to the Confidential Information as You apply to your own confidential information;

(d) only copy or reproduce Confidential Information for the Permitted Purpose;

(e) not directly or indirectly undertake, assist or be involved in any activity that facilitates the acquisition, adoption, implementation, exportation, use or other monetisation of Our Confidential Information, other than in accordance with this Agreement.

7. THINKSTEP-ANZ BRAND

7.1. **Ownership:** You acknowledge that all rights, title and interest in and to the thinkstep-anz Brand and the copyright subsisting in it vests absolutely in Us, and that nothing in this Agreement gives You any interest in the thinkstep-anz Brand other than the right to use it in accordance with this Agreement.

7.2. **Grant of License:** We grant you a non-exclusive, royalty-free, perpetual, revocable worldwide Licence to display the thinkstep-anz Brand on any outputs that You have created based on the Data.

7.3. **Conduct:** You must not, by any act or omission, use the thinkstep-anz Brand in any manner that tarnishes, degrades, disparages, or reflects adversely on Us, or the thinkstep-anz Brand, in any material respect.

7.4. **Quality Control:** We may require You to submit to Us samples of Your use of the thinkstep-anz Brand, (including in any promotional material and/or advertising material produced) to allow Us to determine whether the Your use of the thinkstep-anz Brand complies with the terms and conditions of this Agreement.

8. YOUR OBLIGATIONS

8.1. You will acknowledge Us as the source of the Data at all times when using the Data. This acknowledgement may be a formal academic citation, by using text such as "emission factors supplied by thinkstep-anz" and/or by displaying the thinkstep-anz Brand. If you use the thinkstep-anz Brand, you agree to comply with the Brand Guidelines provided with the Data, and updated from time to time at Our sole discretion.

8.2. You acknowledge clauses 9, 10 and 11, and agree that You are at all times solely responsible (and We are not responsible), for:

(a) selection and consideration of the Data, including for any particular purpose, to achieve any intended results;

(b) accessing and downloading the Data, including any updates;

(c) Your Use of, or inability to Use, the Data; and

(d) the interpretation of any results obtained or conclusions drawn from Use of Data, and You must exercise all appropriate precautions before placing reliance on those results or conclusions.

8.3. You must:

(a) take all reasonable steps to protect the Data from unauthorised access, copying or use; and

(b) immediately notify Us of any actual or potential unauthorised access, copying or use of the Data.

8.4. You must promptly inform us of any changes in relation to Your account details, including but not limited to name and contact details for the authorised representative.

8.5. Auditor Licences only cover audit work for others. A standard commercial Licence is required for calculations made by an Auditor based on the Data for any other purpose.

9. OUR OBLIGATIONS

9.1. On and from the date of the Agreement, We will:

(a) subject to clause 14, answer any reasonable queries You have in relation to the Data;

(b) subject to clause 5, conduct an annual review of the Data and release progressive updates, changes, amendments and/or modifications;

(c) notify You of any changes or updates to the Data and/or Our Brand Guidelines; and

(d) perform Our obligations under this Agreement reasonably and in good faith.

10. WARRANTY

10.1. **Warranty:** We warrant that We have the right to grant the Licence under clause 3 of this Agreement in respect of the Data.

10.2. **Limits on warranty:**

(a) To the extent permitted by law, We:

(i) do not guarantee that the Data is free from errors;

(ii) have not tailored the Data to Your requirements or specifications; and

(iii) do not warrant the quality, performance or suitability of the Data for any purpose.

(b) Accordingly, You:

(i) acknowledge that, to the extent permitted by law, the Data provided by Us is, subject to clause 10.1, provided without warranty of any kind, express or implied, including warranties related to accuracy, reliability, completeness, Intellectual Property Rights, or fitness for a particular purpose;

(ii) acknowledge Your responsibilities under clause 8;

(c) You acknowledge that You have not relied on any representation made by Us which has not been expressly stated in this Agreement.

11. INDEMNITY

11.1. **Licensor Indemnity:** We indemnify You against any Loss incurred by You in relation to proceedings brought by a third party alleging that Your Use of the Data infringes third party intellectual property rights. We have no obligation to indemnify You under this clause if the third-party claim arises out of:

(a) Your Use of the Data contrary to this Agreement; or

(b) Your failure to use corrections made available by Us to avoid infringement.

11.2. **Licensee Indemnity:** You indemnify Us against all Loss suffered or incurred by Us to the extent that the Loss arose from:

(a) any act or omission specified in 11.1(a) or (b);

(b) Your Use of, or inability to Use the Data;

(c) any unlawful, wilfully wrongful or negligent act or omission of Yours in connection with this Agreement;
(d) breach of this agreement by You, including any Enhancement or Commercialisation.

12. LIMITATION OF LIABILITY

12.1. **Exclusion:** To the fullest extent permitted by law:
(a) You acknowledge and agree that except to the extent specified in clause 11.1, We are not liable for any Loss incurred by You or any third party as a result of Using the Data; and Loss resulting from third-party claims.
(b) Without limiting clause 12.1, We exclude all liability to You for indirect, special or consequential Loss arising out of this Agreement, including loss of profit, loss of business revenue or anticipated savings, loss of opportunity, loss of data, other commercial or economic loss of any kind, and with the exception of Loss covered by the indemnity in clause 11.1.

12.2. **Limitation:** To the extent permitted by law, Our total liability to You for all Loss arising from or in connection with this Agreement that is not excluded under clause 12.1, whether in contract, tort (including negligence), equity, under statute or otherwise is limited to 100% of the contract value, and our obligation arising out of or in connection with the Loss is limited to:
(a) replacing or updating of the Data to which the breach relates, or supplying equivalent data; or
(b) the cost of replacing or updating the Data to which the breach relates or of acquiring equivalent Data.

12.3. **Contribution:** Each party's liability to the other party for any Loss arising out of this Agreement or in connection with the relationship established by it is reduced to the extent the other party contributed to the Loss.

13. TERM AND TERMINATION

13.1. **Term:** The term of this Agreement commences on the date you pay Your invoice, and continues in perpetuity, subject to You complying with the Agreement. Licences issued to Auditors start from the date the Data was issued by Us to You.

13.2. **Termination:** Unless otherwise agreed in writing, the Licence Agreement will automatically terminate if You:
(a) breach any of Your obligations under this Agreement; and
(b) the breach is not remedied within 14 days after You receive written notice of the breach from Us.

13.3. **Effect of Termination:** Upon termination of this Agreement:
(a) You must within 20 Business Days (or such other period as agreed in writing with Us) cease all use of Data or the thinkstep-anz Brand in any manner whatsoever; and
(b) You acknowledge that You will have no right to receive any compensation whatsoever from Us in respect of the termination.

13.4. Nothing in this clause 13 requires You to delete, alter or recall Material containing the Data or the thinkstep-anz Brand which is in the public domain, or inaccessible to You due to standard electronic back-up or off-site storage procedures, provided You do not continue to republish, release or disseminate Material without Our prior written consent.

14. SUPPORT

14.1. **Support:** We will use reasonable efforts to assist You with general enquiries and any abnormal errors encountered with the Data. Such assistance is limited to a Reasonable Amount of email support during business hours and specifically excludes assistance (Excluded Support):
(a) for any version of the Data other than the most current version;
(b) with problems, issues or errors arising from the installation or integration of the Data into business systems; and/or
(c) with hardware, operating systems or third-party software.

14.2. **Additional Support:** The Excluded Support in clause 14.1, does not apply to entities or individuals who purchase other Licence types, e.g., Developer or Commercial Licenses.

14.3. We may at Our discretion vary the basis on which this support is provided, or terminate the provision of this support entirely.

15. VARIATION

15.1. We may vary the terms of this Agreement at any time by giving You 7 days' written notice which may be made by Us making a copy of the updated Licence Agreement available on our website and by notifying Licensees by email at the email address specified in the Licensee Account.

16. NOTICES

16.1. We may provide a written notice under this Licence Agreement by:
(a) if the notice is to all licensees, by publishing a notice on Our website; and
(b) if the notice is to the Licensee, email at the email address specified in Your Licensee Account.

16.2. Notices published on Our website will be deemed to have been made on the day that the notice is published. If that day is not a business day in New Zealand, or it is sent after 5pm on a business day in New Zealand, the notice will be deemed to have been published on the next business day in New Zealand. Notices by email will be deemed to have been received by the addressee within one hour of the message leaving the sender's email server, provided that the sender does not receive a notification that the email could not be delivered to the addressee. If the email is sent on a day is not a business day in New Zealand, or it is sent after 5pm on a business day in New Zealand, the email will be deemed to have been received at 9am on the next business day in New Zealand

16.3. You may provide a written notice under this Licence Agreement to Us by emailing Us at data@thinkstep-anz.com.

17. FORCE MAJEURE

17.1. Neither party is liable for any delay or failure to perform its obligations under this Agreement (other than payment) if the delay is due to natural disaster or other event beyond its reasonable control, including without limitation, including acts of God, communication line failures, power failures, riots or other hostilities, strikes, lock-outs, fires, war, flood, cyclone, earthquake or other disaster, epidemics, or governmental action after the date of this Agreement.

17.2. If a party is unable to perform its obligations for 30 consecutive days or more due to a force majeure event (in accordance with clause 17.1), either party may immediately terminate this agreement by notice to the other party. For avoidance of doubt, You will not be required to pay for the Data if We have not delivered it to You due to a force majeure event.

18. GENERAL

18.1. **Governing laws:** This Agreement is governed by New Zealand law and the parties submit to the exclusive jurisdiction of the New Zealand courts.

18.2. **Delay:** If one party fails to exercise or delays exercising any power or right it has under this Agreement, that failure or delay does not operate a waiver of that power or right, and any subsequent exercise of any such power or right.

18.3. **Assignment:** You may not assign your rights or transfer your obligations under this Agreement without our prior written consent, which we won't unreasonably withhold. Any change in control of you will constitute an assignment for the purposes of this clause 18.3.

18.4. **Validity:** If any part of this Agreement is held to be invalid, void or unenforceable, it shall be severed and the remaining provisions of this Agreement will remain in full force and effect and will not be affected.

18.5. Any terms and conditions created or supplied by any other party, in respect of the Data, will be of no legal effect and will not constitute part of this Agreement.

18.6. **Waiver:** Any waiver of, or consent by a party to any departure from, any provision of this Agreement must be in writing and signed by or on behalf of that party and is effective only to the extent for which it is given.

18.7. **Entire agreement:** This Agreement shall equal the entire agreement between the parties in relation to its subject matter and no earlier agreement in relation to the subject matter of this Agreement, whether oral or written, shall have any effect from the date of this Agreement.

18.8. **Relationship between the Parties:** The Parties are independent contracting parties and nothing in the Agreement will make either party an agent or legal representative of the other for any purpose whatsoever. Nor does the Agreement grant either party any authority to assume or create an obligation on behalf or in the name of the other party.