

# Data Licence Agreement



Australian Government



**Please note:**

Once this Data Licence Agreement Schedule is completed and signed, either fax, email or mail it back to the Natural Resources Information (NRI) Unit of the MDBA so the data can be supplied to you.

Fax (02) 02 6230 7579

[gis@mdba.gov.au](mailto:gis@mdba.gov.au)

NRI Unit, Murray-Darling Basin Authority

GPO Box 1801 Canberra ACT 2601

The completed Schedule and Licence Conditions (Annexure 1) set out in this document will constitute a legal agreement between the Murray-Darling Basin Authority (*'the Licensor'*) and you (*'the Licensee'*) in relation to the *'Licensed Material'*.

## The Schedule

General details:	
Project No. (for MDBA use):	
Date of Agreement:	
Licensee name: (registered business name if applicable)	ABN:
Licensee address:	
Licensee authorised representative:	
Name:	
Position:	
Address:	
Phone:	
Fax:	
Email:	

Licensed data (i.e. name of dataset):	Additional condition no.

Term of Licence (if it is to be a permanent licence, write 'Perpetual'):

<b>Project details (in particular how the Data will be used in the project):</b>

<b>Where will the data be used (including any use by consultants):</b>

<b>Additional Conditions:</b> <i>Please note that the additional conditions included in this section override any related conditions under Licence Conditions in Annexure 1 where they are in conflict.</i>
1.
2.

The Murray-Darling Basin Authority agrees to grant and the Licensee agrees to accept a non-exclusive and non-transferable licence to use the licensed data for the purposes set out in the Schedule in accordance with the terms and conditions of this Agreement.

If you are entering into this agreement on behalf of a company or organisation, you warrant that you have the authority to do so.

<b>Licensor (MDBA NRI Manager)</b>	
Signature:	
Name:	
Title:	
Date:	

<b>Licensee</b>	
Signature:	
Name:	
Title:	
Date:	

## **Annexure 1: Licence Conditions**

### **1 RELATIONSHIP OF PARTIES**

- 1.1 The parties shall be deemed to be solely independent contractors and this Agreement shall not be construed to create any partnership, joint venture or agency.
- 1.2 Neither Party shall, by virtue of this Agreement be deemed to have any power or authority to bind or represent the other Party.

### **2 GENERAL LICENCE CONDITIONS**

- 2.1 The Licence granted under this Agreement shall be non-exclusive, and non-transferable unless otherwise specified.
- 2.2 The Licensee shall not, and shall ensure that its employees shall not, without the prior consent of the MDBA, use the Licensed Material in any way other than as set out in the Agreement.
- 2.3 This Licence is limited to use of the Licensed Material within the organisation/party defined as the Licensee.
- 2.4 Notwithstanding Clause 2.3, the Licensee may permit its consultants, contractors or subcontractors ('*Authorised Persons*') with which it has contracted the provision of services to so use the Licensed Material, provided the Licensee takes all reasonable steps to ensure that the Authorised Persons keep the Licensed Material confidential and do not disclose the Licensed Material to any person other than in accordance with the conditions of this Agreement. It is the Licensee's responsibility to make known to the Authorised Persons that the MDBA is custodian of the Licensed Material and be made aware of all terms and conditions contained in this Agreement.
- 2.5 The Authorised Persons may not retain copies of the Licensed Material nor of information products derived from the Licensed Material after ceasing to be retained by the Licensee. It is the Licensee's responsibility to impose this condition upon all Authorised Persons to whom the Licensed Material is provided.
- 2.6 The Licensee may not issue sub-licences to the Licensed Material to parties not covered by this Agreement.
- 2.7 The MDBA shall give the Licensee such assistance as the MDBA reasonably considers necessary to ensure satisfactory access to and use of the Licensed Material for the purpose specified in this Agreement.
- 2.8 If the Licensee discovers any errors or omissions in the Licensed Material, or makes any modification or improvement therein, it shall forthwith inform the MDBA accordingly, and, at the earliest opportunity, make the details of the errors or omissions and any modifications or enhancements available to the MDBA and the MDBA shall be entitled to make use of that information for correction, modification or improvement.
- 2.9 Pursuant to clause 2.9, any corrections made to the Licensed Material will become part of the Licensed Material as if they were part of it from the beginning and shall be subject to the ownership requirements specified in this Agreement.

### **3 TERM**

- 3.1 This Licence shall be for the term specified in the Agreement unless the Licence is withdrawn or terminated in accordance with Clause 12.

## 4 PROTECTION OF PROPRIETARY RIGHTS

- 4.1 The Licensee acknowledges that pursuant to this Agreement it obtains only the rights to use the Licensed Material and that no right, title, or interest in or to any copyrights, trademarks, or other proprietary rights relating to the Licensed Material or to the MDBA is transferred or licensed from MDBA to the Licensee by virtue of this Licence.
- 4.2 The Licensee shall not remove, alter, cover, or obfuscate any acknowledgements, copyright notice, trademark, or other proprietary rights notice placed by the MDBA on the Licensed Material or any portion thereof. The Licensee shall comply with directions submitted by the MDBA regarding the form and placement of proprietary rights notices on the Licensed Material or any portion thereof.
- 4.3 The Licensee shall endorse on all information products of whatever nature (analytical, digital, analogue or cartographic) which it produces using the Licensed Material or any copy or part thereof, a statement:
- a) Acknowledging that the Licensed Material was supplied by the MDBA and is custodian of the Data, and that the MDBA retains the proprietary rights over the Licensed Material.
  - b) Of origin of the Licensed Material, including currency and reliability, where known, using the recommended ANZLIC spatial data metadata standard.

## 5 DISCLAIMER

- 5.1 The MDBA does not warrant or make any representation that the information contained in the Licensed Material is accurate, complete, current or suitable for any purpose or that any estimate, forecast or other information contained in the Licensed Material or otherwise inferred from the Licensed Material will be achieved, or that any statement as to future matters will prove correct.
- 5.2 The Licensee shall ensure, as far as is reasonably possible, that all Authorised Persons are made aware of the matters in Clause 5.1 and that a disclaimer to this effect is included in any release of the Licensed Material.
- 5.3 Where interpretations, calculations and/or conclusions which draw on the Licensed Material in any way are contained in publications for general or public scrutiny or comment where such publication is permitted under this Agreement, then the Licensee shall ensure that a disclaimer is included in the publication which includes statements similar to the following:

*“To the extent permitted by law, the copyright holders (including their employees and consultants) exclude all liability to any person for any consequences, including but not limited to all losses, damages, costs, expenses and any other compensation, arising directly or indirectly from using this publication (in part or in whole) and any information or material contained in it.*

*The contents of this publication do not purport to represent the position of the Murray-Darling Basin Authority. They are presented to inform discussion for improved management of the Basin’s natural resources.”*

## 6 PRIVACY AND CONFIDENTIALITY

- 6.1 The Licensee shall treat the Licensed Material as private and confidential and shall take all reasonable steps to keep the Licensed Material private and confidential. To this end, the Licensee shall:
- a) Take reasonable steps to ensure that any Authorised Persons given access to the Licensed Material is aware of these conditions and uses the Licensed Material only in accordance with this Agreement;
  - b) Copy the Licensed Material for the Licensee’s own purposes only, as described in the **Data Licence Agreement Schedule**; and
  - c) Maintain a system for the safe custody of the Licensed Material and any copies thereof.

## **7 COMMERCIAL USE**

7.1 The Licensee shall not on-sell the Licensed Material in its native form supplied by the MDBA to a Third Party or for general sale.

7.2 The Licensee shall not:

- a) Combine the Licensed Material with any other data held by the Licensee; or
- b) Derive from the Licensed Material by recourse to a process,

to produce material or information of whatever nature (analytical, digital, analogue or cartographic products) for sale to a Third Party or for general sale without the prior consent of the MDBA. The MDBA reserves the right to veto such proposed use, or if accepted, to determine any royalty to be paid to the MDBA (in addition to any previous data supply fees) by the Licensee.

## **8 WARRANTY**

8.1 The MDBA warrants that to the best of its knowledge at the Commencement Date:

- a) It has the power and authority to grant the Licence to the Licensee and does not require the consent of any other person in order to grant the licence;
- b) The Licensed Material does not infringe the intellectual property rights of any person.

## **9 NO LIABILITY**

9.1 The MDBA does not warrant that this Licensed Material does not contain errors, and the MDBA shall not be in any way liable for any loss, damage, or injury suffered by the Licensee, Authorised Persons, or any Third Party consequent upon the existence of errors or omissions in the Licensed Material.

## **10 INDEMNITY**

10.1 The Licensee agrees to indemnify the MDBA and its employees in respect of all claims for loss, damage or injury suffered by the Licensee, Authorised Persons or any Third Party resulting from the use of the Licensed Material or any part thereof or of materials or conclusions produced from or derived from the Licensed Material.

10.2 The indemnity period will be limited to a period of nine years from the date that this Agreement is made between the Licensee and the MDBA.

10.3 The liability under this Agreement:

- a) Shall be capped at and under no circumstances exceed the total sum of \$10 million in aggregate; and
- b) Excludes any special, indirect or consequential damages or loss.

## **11 AUTHORITY**

11.1 Persons whose signatures appear for and on behalf of the Licensee represent that they are authorised to do so and represent and warrant that this Agreement is a legal, valid and binding obligation and is enforceable in accordance with its terms.

## 12 WITHDRAWAL AND TERMINATION

- 12.1 The MDBA may, at its sole discretion, withdraw the Licence granted under this Agreement by 30 Business Day's written notice to the Licensee.
- 12.2 If the Licensee breaches any of these conditions, the MDBA may end the Agreement immediately by written notice to the Licensee.
- 12.3 The termination of the Agreement under Clause 12.1 shall be without prejudice to the rights of either party accrued under the Agreement before termination.
- 12.4 The Licensee shall cease using the Licensed Material for any purpose from the date of termination of the Agreement and shall return the Licensed Material and any copies made of it to the MDBA within 30 calendar days of the date of termination.

## 13 DEFINITIONS

**'Authorised Persons'** means the consultants, contractors, and sub-contractors with which the Licensee has contracted the provision of the services to so use the Licensed Material under the terms of this Agreement;

**'Agreement'** means this Data Licence Agreement and includes all its schedules, attachments and annexures and any replacement of them;

**'Business Day'** means a day that is not a Saturday, Sunday, public holiday or bank holiday in the Australian Capital Territory;

**'Commercialise'** in relation to the Licensed Material, means to manufacture, sell, hire or otherwise exploit a product or process, or to provide a service, incorporating that Licensed Material, or to license any third Party to do any of those things; and **Commercial Use** and **Commercialisation** shall be similarly construed;

**'Confidential Information'** means information which; is by its nature confidential, or the MDBA designates as confidential, or the Licensee knows or ought to know is confidential, but does not include information which; is publicly available other than by breach of this Agreement or by any other unlawful means; is in the Licensee's possession without restriction in relation to disclosure before the date of receipt from the MDBA; or has been independently developed or acquired by the Licensee;

**'Intellectual Property'** includes, all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

**'Licensed Material'** means the Material provided by the MDBA to the Licensee under this Agreement as specified in the Schedule and may include any Material for which the MDBA has custody but is not the owner;

**'Material'** includes data, documents, equipment, software, goods, information and Licensed Material stored by any means;

**'Murray-Darling Basin Authority' or 'MDBA'** means the Murray-Darling Basin Authority and includes the Authority's employees, officers, agents and subcontractors, and its executors, administrators, successors and permitted assigns;

**'Party'** and **'Parties'** mean the Parties to this Agreement;

**'Third Party'** means any individual/organisation that is not defined as the Licensee nor an Authorised Persons under the terms of this Agreement.