

# AGREEMENT

## FOR USE OF THE GEOCENTRIC DATUM OF AUSTRALIA (GDA) LOGO

### PARTIES

**Commonwealth of Australia**, represented by and acting through, Geoscience Australia, a part of the Department of Industry Science and Resources; (**'Commonwealth'**)

-and-

**the Licensee.**

### PURPOSE

- A. The GDA logo is owned by the Commonwealth on behalf of the Intergovernmental Committee on Surveying and Mapping (ICSM) for use in connection with and subject to the direction and control of the ICSM.
- B. The ICSM has agreed to the terms and conditions of this Licence Agreement.
- C. The Commonwealth, on behalf of ICSM, is prepared to licence the GDA logo for use by licensees on GDA Compliant or GDA Compatible Products for the purposes of promoting the Geocentric Datum of Australia standard on the terms and conditions stated in this Agreement.

### OPERATIVE PART

1. The Definitions in Schedule B apply to this Agreement.
2. This Agreement comes into operation when the Applicant submits an Application to the Commonwealth.
3. Any Licence formed under this Agreement comes into operation on a date notified by the Commonwealth.
4. This Agreement is constituted by Schedule A (when completed), Schedule B and Schedule C.

# SCHEDULE A:

## APPLICATION FOR THE GEOCENTRIC DATUM OF AUSTRALIA (GDA) LOGO USER LICENCE

### INTRODUCTION:

Schedules A, B and C represent the complete terms of offer for use of the GDA logo, and completion of Schedule A will constitute your application for a GDA logo user licence. Read all schedules carefully. Please print or type your specific details and requirements on Schedule A.

By completing and submitting this Application, you, the Applicant, agree to be bound by all terms and conditions in Schedules A, B and C, which will form a binding Licence Agreement between you and the Commonwealth following approval by Geoscience Australia. Geoscience Australia will notify you of the commencement date of the Licence Agreement.

### 1. APPLICANT DETAILS

To be completed by Applicant

Organisation/Company

A.C.N. Number

A.B.N. Number

Address

Telephone

Facsimile

Email Address

### 2. PROPOSED USE OF GDA LOGO:

The GDA logo may only be used on Products related to Australian land mass and/or the geographic area that lies within Australia's exclusive economic zone. The Product on which the GDA logo is to be used is:

A. Type of Product:

- Hardcopy map or publication; and/or
- Digital Data or
- Software

B. Description of the proposed Product(s) to carry the GDA logo, and the purpose of the Product.

(Attach a separate sheet if this is insufficient space)

C. State the date until, which you require the use of the GDA Logo. This will define the Term of the Licence. [Note: The date must be a day before the date specified in Schedule C, clause 2.2]

(date) (month) (year)

3. PRINCIPAL LICENCE CONDITIONS:

(You must read Schedules B and C for a full list of definitions and conditions).

I the Applicant have read Schedules B and C which set out the terms and conditions of the Licence and I accept all terms and conditions.

A summary of the principal conditions that will apply when the Licence is granted is given below:

- Licence is granted for Single use of the GDA logo.
• Intellectual Property in the GDA logo remains with the Commonwealth of Australia.
• Geoscience Australia reserves the right to request further information

from applicants, and/ or to refuse a licence to use the GDA logo.

- Either the applicant or the Commonwealth of Australia may terminate the Licence under the conditions as specified in Schedule C.
• It is the responsibility of the Licensee to ensure the Product is GDA Compliant and must warrant that the Product is GDA Compliant or GDA Compatible. The Commonwealth licenses the use of the GDA logo on the basis of representations by the Licensee and on the basis of the Applicant's warranty as to the Product's compliance with GDA.
• The GDA logo may only be displayed on registered GDA Compliant or GDA Compatible Products.
• If a user has previously downloaded the GDA logo for use on a Product and subsequently wants to use it on another Product, an additional application for a Licence is required.
• The Licence is not transferable. You must not pass the GDA logo onto another party for purposes outside the conditions of this Agreement.
• The GDA logo must not be changed (other than scaling, which must retain the correct proportions).
• The GDA logo must be displayed clearly and accurately on the registered Product.
• The GDA logo may only be used for Products relating to Australian land mass and/or the geographic area that lies within Australia's exclusive economic zone.
• In no event shall the Commonwealth of Australia, the Intergovernmental Committee on Surveying and Mapping (ICSM) or its members be

liable for any damage arising from or in connection with to the incorrect, inappropriate or unauthorised use of the GDA logo.

- Deliberate or reckless misuse of the GDA logo may result in legal action.
- The Licensee must provide a copy of the Product containing the GDA logo to the Agent.

### 3A. APPROVAL PROCESS

The Applicant agrees to co-operate with the Commonwealth by making declarations, and responding to queries in relation to the Product and proposed use of the GDA logo as may be required by Geoscience Australia in respect of the grant of the Licence.

The Applicant agrees not to use the GDA logo until Geoscience Australia notifies the Applicant of the commencement date of any Licence granted under this Agreement. (refer **Schedule C** cl 2.1).

### 4. THE LOGO:

The Licence to be granted by the Agreement when Schedule A is accepted by the Commonwealth is for the single use of the GDA logo. The GDA logo will be supplied to the Licensee [please specify:]

- by electronic mail; or
- on a MS DOS 3.5" Floppy Diskette.

### 5. AUTHORISATION:

I have read Schedules A, B and C and agree to all the terms and conditions stated in those schedules.

I undertake that all details I have completed are true and correct.

I understand that Schedules A, B and C

will form the terms of the Licence Agreement when accepted by the Commonwealth (acting through Geoscience Australia).

Executed as a Deed

SIGNED, SEALED AND DELIVERED  
for and on behalf of the Applicant:

Name:

Position held/title:

Signed:

Dated:

### HOW TO LODGE THIS APPLICATION

Send this application to Geoscience Australia Copyright Manager. Subject to approval, a digital GDA logo will then be provided with a copy of the Licence Agreement.

Geoscience Australia Copyright  
Manager  
GPO Box 378  
CANBERRA, ACT, 2601

Facsimile: (02) 6249 9955  
Toll Free: 1800 800 173  
Phone: (02) 6249 9814

# SCHEDULE B:

## DEFINITIONS

“**Application**” means the Application for a licence to use the GDA logo constituted by **Schedule A** when fully and correctly completed by the Licensee, and when read in conjunction with this **Schedule B** and the Licence Conditions specified in **Schedule C**, and which will form the basis of the Licence Agreement when accepted by Geoscience Australia.

“**Agent**” means Geoscience Australia

“**Geoscience Australia**” means the agency of the Commonwealth of Australia (a prescribed agency of the Department of Industry Tourism and Resources), and includes any agency, which succeeds to the functions of that agency.

“**GDA**” means Geocentric Datum of Australia.

“**GDA Compatible**” relates to Products which consist of written material supporting GDA implementation, or digital data, or hardcopy map products. To be GDA Compatible, Products must:

- Use a scale or resolution such that the difference between the datum used and GDA is insignificant; or
- Be based on the WGS84 reference frame (after 9 June 1994); or
- Be based directly on ITRF 92 or one of its successors; and
- User Support material for the product must state the datum / reference frame being used or transformation algorithms used in preparing the

Product.

“**GDA Compliant**” relates to a data or software Product that has been developed on, converted to, or transformed to the GDA.

To be GDA Compliant a *software* Product must:

- Use GRS80 ellipsoid for all calculations (note: WGS84 is GDA Compatible, NOT GDA Compliant); and
- Use algorithms that are consistent with those specified in the GDA Technical Manual (i.e. they can produce the same results as the Technical Manual algorithms – within the limits of the accuracy required by the Product, and as documented by the Product); and
- User support material for the Product must contain a description of the algorithms and their implementation including the reference frame used.

To be GDA Compliant a *data* Product must:

- Be based on positions calculated from existing, accepted GDA94 positions (i.e. traceable to the AFN/ANN GDA94 positions either directly or through the State/Territory and National geodetic networks); and

- User support material for GDA Compliant Products must contain a description of the algorithms and their implementation including the reference frame used.

**“GDA Technical Manual”** means the technical manual at [www.anzlic.org.au/icsm/gdatm/index.html](http://www.anzlic.org.au/icsm/gdatm/index.html)

**“GDA logo”** means the logo licensed to the Licensee under the terms and conditions of the Licence Agreement, and which must be displayed in its entirety and on the terms and conditions of the Agreement (and in particular in accordance with clause 4 of Schedule C).

**“Licence”**, means the Licence provided for in condition 3 of Schedule C.

**“Licensee”**, in relation to a particular Licence Agreement, means the Applicant referred to in **Schedule A**.

**“Licence Agreement”** means the Agreement between the Commonwealth and the Licensee, which comes into force when Geoscience Australia accepts the Application, and is constituted by Schedules A, B, C.

**“Person”** includes a body corporate or incorporate or individual or a body politic.

**“Product”** means the product on which the GDA logo is to be used by the Licensee as specified in Schedule A, which must relate or pertain to Australian land mass and/or the geographic area that lies within Australia’s exclusive economic zone.

**“Single Use”** means for use on the Product specified in Item 2 of Schedule A, and for the avoidance of doubt, includes any mass production of that one particular Product (but not new versions of, adaptations of or modifications to

that Product).

**“WGS84”** means World Geodetic System 1984.

**“ITRF92”** means International Terrestrial Reference Frame 1992.

**“GRS80”** means Geodetic Reference System 1980.

# SCHEDULE C:

## CONDITIONS OF LICENCE RELATING TO THE GEOCENTRIC DATUM OF AUSTRALIA (GDA) LOGO

### 1. Definitions

1.1 In this **Schedule C**, expressions used shall have the meaning ascribed in **Schedule B**.

### 2. Duration

2.1 Subject to these conditions, the Licence Agreement shall take effect upon the date Geoscience Australia notifies the Licensee that the License is to commence and shall continue unless terminated in accordance with this Agreement.

2.2 The term of the Licence shall expire on the date specified in Schedule A, and in any event not later than 1 January 2020.

2.3 Continued use of the GDA logo past the Licence expiry date is subject to the written permission for extension of the Licence by Geoscience Australia.

### 3. Licence

3.1 The Commonwealth grants to the Licensee a non-exclusive, non-transferable licence to use, reproduce, make available, communicate to the public and display the GDA logo on the Product which is specified in Schedule A, and for the purposes specified in Schedule A Item 2.

3.2 Subject to condition 8.2 of this Schedule C, the rights granted in condition 3.1 above extend to the

consultants, contractors or subcontractors of the Licensee.

3.3 Where it is stipulated in **Schedule A** that a Licence is to be for single use, the Licensee may use and reproduce the GDA logo under the conditions applicable to the definition of the Licence specified.

3.4 Subject to clause 3.2, the rights granted herein are restricted solely to the Licensee and may not be assigned, transferred or sub-licensed without the prior written permission of the Agent, which permission may be granted subject to any conditions which the Agent may require.

### 4. Reproducing and displaying the GDA logo

4.1 The GDA logo must be displayed in its entirety without modification and subject to clause 4.2, may be displayed in colour or in monochrome.

4.2 Where the GDA logo is displayed, reproduced, made available or communicated to the public ('displayed') in colour, it must be displayed using Pantone 282 (blue) for the lettering component of the GDA logo and Pantone 144 (orange) for the remaining design element of the GDA logo. If these colours cannot be used, then the GDA logo must be displayed in black monochrome.

4.3 The GDA logo must not be modified, distorted or adapted in any way other than for scaling purposes. Any scaling must be such that both dimensions of the GDA logo are scaled in correct proportion to the licensed GDA logo.

## 5. Warranty

5.1 The Licensee warrants that it has made prudent inquiry and has conducted necessary testing of the Product and warrants that the Product is GDA Compatible or GDA Compliant.

5.2 The Licensee warrants that:

- (a) all details completed by the Applicant in Schedule A; and
- (b) any representations made or declarations made by the Applicant in the Application, or subsequently in the approval process for the Licence, or made at any other time

are correct and are not misleading in any particular.

The Licensee acknowledges that provision of false or misleading information regarding GDA Compliance or GDA Compatibility of its Product may, in addition to being a breach of the Agreement, and the Licence Agreement also constitute a breach the *Trade Practices Act 1974 (Cth)*.

5.3 The Commonwealth warrants that the grant of the Licence does not infringe the Intellectual Property rights of any person.

5.4 The warranties in this clause 5 survive the expiration or earlier termination of this Agreement.

## 6. Delivery

6.1 The GDA logo shall be supplied to the Licensee in the format nominated in **Schedule A Item 4**.

## 7. Ownership

7.1 The Licensee acknowledges that the Commonwealth retains ownership of the GDA logo and of the Intellectual Property rights therein.

## 8. Security

8.1 The Licensee shall, subject to condition 8.2, secure the GDA logo in safe custody.

8.2 The Licensee shall take all responsible steps to ensure that any person, including any sub-contractor employed by the Licensee, keeps the GDA logo secure.

8.3 The Licensee agrees not to transfer licence rights to any person or use the GDA logo for any purpose other than in accordance with the terms of this Agreement.

## 9. Release and Indemnity

9.1 The Licensee:

- (a) releases the Commonwealth, the Agent, their employees and contractors, and any person claiming under or through those parties, in respect of all liability for loss, damage or injury which may be suffered by it arising from the Licensee's use of the GDA logo; and
- (b) indemnifies the Commonwealth, the Agent, their employees, agents and contractors, and any person claiming under or through those parties (in this clause referred to as "those indemnified"), from and against

any loss (including legal costs and expenses on a solicitor/own client basis), or liability, incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by any wilful, unlawful or negligent act or omission of the Licensee, its officers, employees, agents or subcontractors in connection with this Agreement including any breach of warranty by the Licensee, or arising from any persons reliance on the GDA logo.

9.2 The Licensee's liability to indemnify the Commonwealth under this clause 9 shall be reduced proportionately to the extent that any act or omission of the Commonwealth or its employees, agents or contractors contributed to the loss or liability.

9.3 This clause 9 shall survive the expiration or earlier termination of the Agreement.

## **10. Termination**

10.1 The Licence Agreement may be terminated:

- (a) if either party breaches any of the terms of the Agreement and fails to remedy the breach within one month of a written notice from the other party specifying the breach and requesting the remedying thereof;
- (b) by either party by giving the other party one month's written notice of termination of the Agreement.

10.2 The Licensee shall cease all use of the GDA logo for any purpose from the date of termination of the Licence Agreement and shall:

- (a) delete any digital files of the GDA logo; and
- (b) where breach of the Agreement has occurred, destroy items displaying the GDA logo within 30 days of the date of termination, and
- (c) provide a written declaration to Geoscience Australia that conditions 10.2 (a) and (where there has been a breach of the Licence Agreement) 10.2 (b) have been complied with.

## **11. Entire Agreement**

11.1 The Licence shall supersede all prior agreements and undertakings between the parties relating to the GDA logo and constitutes the entire agreement between the parties. No addition to or modification of any provision of the Agreement shall be binding upon the parties unless made in writing and signed by both Parties.

## **12. Notices**

12.1 All notices which are required to be given under the Licence Agreement shall be in writing and shall be:

- (a) delivered to the other party personally; or
- (b) sent by facsimile to the facsimile number of the other party, in which case notice shall be deemed to have been received on the receipt of confirmation from the answering machine; or
- (c) forwarded by mail to the

address of the other party, in which case notice shall be deemed to have been received 48 hours after it was posted.

12.2 The Addresses and facsimile number of the party to the Licence Agreement, shall be as specified in **Schedule A**, and **Schedule B** or as otherwise notified during the currency of the Agreement.

12.3 The Licensee agrees to notify the Agent of any changes to the Contact Officer and contact details of the Officer during the life of the Agreement.

### **13. Assignment**

13.1 The Licensee shall not assign, whether in whole or part, the benefit or burden of the Licence Agreement, without prior written consent of the Agent.

### **14. Law**

14.1 The Agreement and the Licence Agreement shall be governed by and construed in accordance with the laws for the time being in force in the Agents State or Territory.

### **15. Waiver**

15.1 No forbearance, delay or indulgence by a party in enforcing the provisions of the Licence Agreement shall prejudice or restrict the rights of that party, nor shall waiver of those rights operate as a waiver of any subsequent breach.

### **16. Application**

16.1 Where the Agent and the Licensee are agencies of the Commonwealth of Australia, such that neither is permitted to enter into a binding

legal agreement except as the Commonwealth, then the Licence Conditions stated herein shall be read as giving rise to merely an arrangement.

### **17. Audits**

17.1 The Commonwealth reserves the right from time to time to conduct an audit of the Licensee's use of the GDA Logo and compliance with the terms and conditions of this contract, and to delegate this right to the Agent.

17.2 The Licensee agrees to maintain for the period of the Licence and to retain for a further period of 7 years accurate and up-to-date records of:

(a) use of the GDA logo on the Product; and

(b) of testing of the Product for GDA Compliance or GDA Compatibility.

17.3 The Licensee agrees to make available any documentation or materials relating to the testing and use referred to in 17.1 to the Commonwealth to inspect, copy and use for audit purposes.