



MDS Foundation Map Order Form

Following receipt of your order, we will send an email confirmation and a link to a webpage providing all the instructions required.

Account Details: (all fields mandatory)

Order Date:	
Contact Name:	
Company Name:	
ABN:	
Street Address:	
Suburb:	
State:	
Postcode:	
Email:	
Phone Number:	

Product Details:

Service:	MDS Foundation Map Annual Fee \$2500 + \$250 GST = \$2,750
IP Address: <i>Provision of IP Address will enable access to the service and is used for authentication purposes only.</i>	

Method of Payment:

<input type="checkbox"/> Credit Card <input type="checkbox"/> MasterCard <input type="checkbox"/> VISA	<input type="checkbox"/> Direct Credit Payment on receipt of Tax Invoice
Name on Card: _____	Please ensure that you return this order form along with an authorised Purchase Order to allow us to process your order for the MDS Foundation Map.
Card Number: _____	
Cardholder Signature: _____	
Expiry: _____ / _____	
Security: _____	
Amount: \$2,750 (\$2,500 + \$250 GST)	Amount: \$2,750 (\$2,500 + \$250 GST)

Please either fax back to (02) 8436 2888 or email to sales@mapds.com.au

For phone enquiries, please call (02) 8436 2800.

Thank you for your business, we appreciate it very much.

LICENCE AGREEMENT

This is a legal agreement between You and MapData Sciences Pty Ltd ABN 45 053 437 282 (MDS) regarding Your use of the MDS Products and PSMA Data. MDS Products and PSMA Data includes all programs, vector or raster data and printed or electronic documentation.

By clicking an accept button during installation and/or by installing, copying or otherwise using any part of the MDS Products and PSMA Data, You agree to be bound by the terms of this Agreement. If You do not agree with the terms of this Agreement You must not install, use or copy the MDS Products and PSMA Data in any way.

IT IS AGREED

1. Definitions

1.1 In this Agreement, unless the contrary intention appears:

- (1) **"Access Term"** means 12 months;
- (2) **"Agreement"** means this Agreement;
- (3) **"Annual Access Fee"** means the amount payable annually by You for the use of the MDS Products and PSMA Data in accordance with this Agreement;
- (4) **"Business Day"** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.
- (5) **"Confidential Information"** means all information or knowledge of a Party in whatever form (whether oral, written or embodied or residing in any document, equipment or any other medium whether in documentary, visual, machine readable or other form), which is;
 - (a) by its nature confidential;
 - (b) designated by the disclosing Party or a third party as confidential; or
 - (c) the recipient Party knows or ought to know is confidential.
- (6) **"Contractor"** means any person or organisation other than an employee engaged by You to perform services for Your Internal Use;
- (7) **"Data Custodians"** in relation to the PSMA Data means the Joint Venture Parties and any other custodians of data incorporated in the PSMA Data;
- (8) **"Direct Marketing"** means one to one marketing, normally supported by a database, which uses one or more advertising media to effect a measurable response and/or transaction and includes telemarketing, bulk email messaging (spam), postal canvassing and list brokering;
- (9) **"Fees"** means the Annual Access Fee and subsequent Annual Access Fee payable under this Agreement;
- (10) **"GST"** means GST as defined in the *A New Tax System (Goods and Services) Tax Act 1999* as amended from time to time;
- (11) **"Intellectual Property Rights"** means all intellectual property rights including rights of any kind in:
 - (a) inventions, discoveries and novel designs (whether or not registrable as patents or designs);
 - (b) copyright (including future copyright) in all literary works, artistic works, computer software and other work or subject matter in which copyright subsists or may in the future subsist;
 - (c) any database protection rights whether arising under statute or otherwise
 - (d) trade secrets; or
 - (e) trade and service marks (whether registered or unregistered);
- (12) **"Internal Use"** means use of the MDS Products and PSMA Data within Your business where no MDS Products and PSMA Data or output from the MDS Products and PSMA Data is provided to any third person whether free of charge or for consideration;
- (13) **"Joint Venture Parties"** means the mapping agency of each State and Territory of Australia and of the Commonwealth of Australia;
- (14) **"Licence"** means the licence to use the Intellectual Property Rights comprised in the MDS Products and PSMA Data, in accordance with the Agreement, together with any rights in relation to the MDS Products and PSMA Data given to You by the Agreement;
- (15) **"MDS"** means MapData Sciences Pty Ltd ABN 45 053 437 282 (MDS);
- (16) **"MDS Products"** means those data sets provided by MDS;
- (17) **"Party"** means either MDS or You as the context dictates;
- (18) **"PSMA"** means PSMA Australia Limited ABN 23 089 912 710;
- (19) **"PSMA Data"** means data licensed to MDS by PSMA Distribution and included on your MDS Tax Invoice;
- (20) **"PSMAD"** means PSMA Distribution Pty Limited ACN 131 984 800;
- (21) **"Subscription"** means that you agree to continue to pay Annual Access Fees on your anniversary to maintain access and receive regular updates of MDS Products and PSMA Data.
- (22) **"Thinning"** means computer or manual manipulation of digital spatial data so as to reduce the computer storage space required by the data which is achieved by deleting intermediate or redundant data points defining a linear feature or boundary whilst preserving the general shape fidelity of the boundary or feature;
- (23) **"You" or "Your"** means the person or organisation that is entering into this agreement so that You can use the Data that is the subject of this Agreement.

2. Interpretation

2.1 In this Agreement, unless the contrary intention appears:

- (1) the clause headings are for ease of reference only and must not be relevant to interpretation;
- (2) words in the singular number include the plural and vice versa;
- (3) a reference to a person includes bodies corporate and unincorporated associations and partnerships;
- (4) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (5) the word “includes” is not a word of limitation;
- (6) money references are references to Australian currency;
- (7) each provision of this Agreement will be interpreted without disadvantage to the party who (or whose representative) drafted that provision; and
- (8) the recitals to this Agreement form part of the Agreement and the Parties warrant the truth and accuracy of the recitals.

3. Grant of Licence

3.1 MDS grants You a non-exclusive, non-transferable licence of the MDS Products and PSMA Data for the Access Term in accordance with the terms set out in this Agreement.

3.2 Any rights not specifically granted in this Licence are reserved to MDS.

4. Protection of MDS Products and PSMA Data – Physical Security

4.1 Except as otherwise provided by this Agreement, You must ensure that proper and secure storage is provided for the MDS Products and PSMA Data while in Your possession or control and You must take all reasonable steps to ensure that the MDS Products and PSMA Data is protected at all times from misuse, damage or destruction whilst in Your possession or control.

4.2 The provisions of clause 4 apply to all forms of media upon which the MDS Products and PSMA Data are kept or transmitted.

4.3 You will ensure that all copies of the MDS Products and PSMA Data are dealt with in accordance with MDS’ reasonable directions.

4.4 A reference in this clause to MDS Products and PSMA Data includes any information about the design, specification or content of the MDS Products and PSMA Data.

5. Permitted Uses of MDS Products and PSMA Data

5.1 You may, on the terms in this Agreement and any other terms that MDS may impose from time to time, use the MDS Products and PSMA Data for Internal Use only.

5.2 You may sub-licence MDS Products and PSMA Data to Contractors for the sole purpose of allowing the Contractors to provide services for Your Internal Use. You must ensure that MDS Products and PSMA Data is only provided to the Contractors in accordance with the terms and access conditions in this Agreement.

5.3 You will, at no charge, provide MDS with suggestions to correct any errors detected in the MDS Products and PSMA Data.

5.4 You may only use the MDS Products and PSMA Data on as many devices, or allow as many people to access the MDS Products and PSMA Data for which you have paid a Fee. The count of devices or people is to include Contractors.

6. Enforcement of Agreements by You

6.1 You must ensure that all Contractors comply with the terms of their agreements with You.

6.2 If You become aware of, or suspect, any breach by a Contractor of its agreement with You, You must immediately notify MDS and must take such action as MDS considers necessary or desirable to cause the infringement to cease.

6.3 MDS must not commence litigation in relation to a Contractor’s alleged breach of its agreement with You without first consulting You, following which You must render all reasonable assistance to PSMA in relation to any such litigation.

6.4 If You are in breach of this clause then, in addition to MDS’ right of termination under clause 22, MDS may notify You in writing that You are in breach of the Agreement and, upon the giving of such notice, You irrevocably appoint MDS Your agent for the purpose of enforcing Your rights against the Contractor arising out of the breach and pursuing any remedies against the Contractor whether under the agreement, at law or in equity.

7. Protection of MDS Products and PSMA Data – Labelling and Notices

7.1 You must ensure that any copy or expression, including in material form, of the MDS Products and PSMA Data made pursuant to this Agreement (including a copy of the MDS Products and PSMA Data provided to a Contractor) retains the MDS copyright notice and PSMA thumbprint that is present on the MDS Products and PSMA Data at the time MDS provides it to You.

7.2 You must comply with any reasonable directions of MDS regarding the form and content of any copyright notice, PSMA thumbprint and/or disclaimer that is to appear on the MDS Products and PSMA Data.

7.3 All human readable output generated by You that contains any of the MDS Products and PSMA Data must contain a human readable copyright notice with at least the following words. “Map data (C) “Year” MapData Sciences Pty Ltd (MDS), PSMA.

8. Prohibited Use of MDS Products and PSMA Data

8.1 You must not:

- (1) grant anyone other than a Contractor access to the MDS Products and PSMA Data ;
- (2) create a commercial product or service from the MDS Products and PSMA Data;

- (3) make changes to the spatial co-ordinates of the MDS Products and PSMA Data;
 - (4) use the MDS Products and PSMA Data for Direct Marketing;
 - (5) use or disclose the MDS Products and PSMA Data to any person if, were You an 'organisation' for the purposes of the *Privacy Act 1988*, such use or disclosure would be inconsistent with the obligations imposed on organisations under that Act; or
 - (6) display or distribute (whether for consideration or not) the MDS Products and PSMA Data including, for example, address details, XY coordinates or vector format data over an open electronic network (including the internet).
- 8.2 You must comply with any Special Conditions set out in Item 5 of Annexure A in relation to the MDS Products and PSMA Data.
- 9. Access Fee**
- 9.1 Upon the presentation of a valid tax invoice, You must pay the Annual Access Fees to MDS:
- (1) before MDS delivers the MDS Products and PSMA Data to You,
 - (2) within 14 Business Days after receipt of a valid Tax Invoice
 - (3) or before You install or copy the MDS Products and PSMA Data to any computer in Your control, which ever event occurs first.
- 9.2 If You are under Subscription, during the 12th month of each year for which you have a valid Licence, MDS will issue a Tax Invoice for the next 12 months Fees. You may either pay the invoice before the current Licence expires and continue to utilise the MDS Products and PSMA Data, or You must advise MDS that you no longer wish to utilise the MDS Products and PSMA Data and that at the end of the current 12 month period You will terminate Your usage of the MDS Products and PSMA Data and comply with clause 22.
- 9.3 If you are under Subscription and You fail to make payment in accordance with clause 9.1, MDS may:
- (1) notify You that it is imposing a late payment fee calculated at 1% of the amount owed to MDS for each month or part thereof in which You are in default of payment; and
 - (2) if payment is not received within a further 20 Business Days of the notification of the late payment fee, immediately terminate this Agreement under clause 22.
- 10. Payment of Fees**
- 10.1 Payment of the Fees is made:
- (1) if cash is tendered, on the date it is tendered;
 - (2) if a cheque (bank or otherwise) or other negotiable instrument is tendered, -on the date upon which the cheque or other negotiable instrument is negotiated and cleared by MDS' bankers, or
 - (3) if made by electronic funds transfer, on the date on which funds are credited to MDS' account.
- 10.2 In addition to any rights to terminate this Agreement under clause 9, if You default in making a payment to MDS in accordance with this Agreement, MDS may in its absolute discretion require You to reimburse MDS for all collection costs including legal costs incurred by MDS calculated on a solicitor and client basis as a consequence of MDS instructing its solicitor to provide advice to it in connection with the default and/or to institute such recovery process as MDS in its absolute discretion decides. MDS will notify You of its intention to seek legal advice.
- 10.3 Any payments tendered by You to MDS must be applied as follows:
- (1) first as reimbursement for any collection costs incurred by MDS in accordance with this clause;
 - (2) secondly, in payment of any interest charged to You in accordance with clauses 9.3; and
 - (3) thirdly, in satisfaction or part satisfaction of the oldest portion of Your account.
- 11. Intellectual Property Rights**
- 11.1 You agree that in relation to the MDS Products and PSMA Data and any copies, updates, new releases, modifications and alterations (including by way of Thinning, reduction or manipulation) of the MDS Products and PSMA Data, whether made by MDS or a third party:
- (1) MDS or the Data Custodians hold, or will hold, any and all Intellectual Property Rights;
 - (2) there is no transfer of title or ownership to You; and
 - (3) no Intellectual Property Rights are held or will be held by You.
- 11.2 You agree that no new Intellectual Property Rights will arise in any data set created solely by Thinning, reducing or manipulating the MDS Products and PSMA Data and You warrant that You will not assert any such rights.
- 11.3 You must ensure that Your agreements with Contractors state that no new Intellectual Property Rights will arise in any data set as a result of the Thinning, reduction, or manipulation of the MDS Products and PSMA Data and includes a warranty from the Contractor that it will not assert any such rights.
- 12. Defence of Proceedings – Infringement caused by use of the MDS Products and PSMA Data**
- 12.1 You must notify MDS as soon as practicable if You become aware of any third party claim or suspected claim of infringement of their Intellectual Property Rights against MDS by Your use of the MDS Products and PSMA Data.
- 12.2 If a third party makes a claim of infringement of their Intellectual Property Rights against the You as a result of Your use of the MDS Products and PSMA Data in accordance with this Agreement You must immediately allow MDS the right to control the defence of the claim and any related settlement negotiations.
- 12.3 In the event that You are prevented from using any of the MDS Products and PSMA Data as a result of any third party claim of infringement of their Intellectual Property Rights against the You:

- (1) MDS must, immediately upon becoming aware, notify You that You must not continue to use the data and within twenty (20) Business Days attempt to procure a licence for You to use the data whether from the third party or any other party; and
 - (2) You must, immediately upon becoming aware, cease to use the MDS Products and PSMA Data.
- 12.4 If MDS fails to obtain a licence for the use of the MDS Products and PSMA Data by You as required under clause 12.3(1), You may at any time immediately terminate this Agreement, in addition to any rights that You may have, at law or in equity, or under any other provision of this Agreement.
- 12.5 You must render all reasonable assistance to MDS in relation to any claim of infringements referred to in clause 12.1 including, if requested by MDS, making all reasonable efforts to provide all necessary information and assistance to MDS in defence of any claim of infringement.
- 13. Indemnities – Intellectual Property Rights**
- 13.1 You must indemnify MDS, PSMA and the Data Custodians against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim, demand, suit, action, dispute or proceeding brought by a third party (excluding a Joint Venture Party) alleging infringement of the Intellectual Property Rights of the third party if:
- (1) such claim arises from use of the MDS Products and PSMA Data in a manner or for a purpose not reasonably contemplated or not authorised by MDS under this Agreement; or
 - (2) the ability of MDS, PSMA or the Data Custodians to defend such claim has been prejudiced by Your failure to:
 - (a) notify MDS in writing as soon as practicable of any infringement, suspected infringement or alleged infringement;
 - (b) give MDS the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings; or
 - (c) provide MDS with reasonable assistance in conducting the defence of such a claim.
- 14. Confidentiality**
- 14.1 You acknowledge that You will have access to valuable commercial information of MDS, PSMA, and the Data Custodians, including Confidential Information.
- 14.2 You must:
- (1) take all reasonable steps to maintain and safeguard the confidentiality of the information referred to in this clause; and
 - (2) ensure that Your employees and the Contractors maintain the confidentiality of the information referred to in clause and use this information solely for the purposes permitted under this Agreement.
- 14.3 You agree to provide access to the MDS Products and PSMA Data to only Your employees and Contractors who need access for the purpose of exercising Your rights under this Agreement.
- 14.4 You agree that MDS may provide any of Your Confidential Information to PSMA, provided that PSMA agrees to maintain Your confidentiality.
- 15. Privacy**
- 15.1 Acknowledgement**
- The Parties acknowledge that the Data does not on its own constitute Personal Information.
- 15.2 Conditions**
- You agree:
- (1) that You are responsible for ensuring that Your exercise of rights under this Agreement does not infringe the *Privacy Act 1988* (Cth);
 - (2) that You will not use or disclose Personal Information obtained during the course of performing Your obligations under this Agreement then only for the purposes of this Agreement;
 - (3) to take all reasonable measures to ensure that Personal Information in Your possession or control in connection with this Agreement is protected against loss and unauthorised access, use, modification, or disclosure;
 - (4) not to do any act or engage in any practice that would breach any Information Privacy Principal (IPP) contained in Section 14 of the *Privacy Act 1988* (Cth), which if done or engaged in by an Agency (within the meaning of that Act), would be a breach of the IPP;
 - (5) to carry out and discharge the obligations contained in the IPPs as if You were an Agency under the *Privacy Act 1998* (Cth);
 - (6) to disclose in writing to any person who may ask, the content of the provision of this Agreement (if any) that are inconsistent with a National Privacy Principle or Approved Privacy Code binding a party to this Agreement;
 - (7) to immediately notify MDS if You become aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause, whether by You or any Contractor;
 - (8) to cooperate with any reasonable demands or inquiries made by PSMA Distribution or MDS on the basis of the exercise of the functions of the Privacy Commissioner under the *Privacy Act 1988*;
 - (9) to ensure that any person who has access to any Personal Information is made aware of, and undertakes in writing, to observe the National Privacy Principles and other obligations referred to in this clause;
 - (10) to comply, as far as practicable, with any policy guidelines issued by the Privacy Commissioner from time to time relating to the handling of Personal Information;

- (11) to comply with any direction of MDS or PSMA to observe any recommendation of the Privacy Commissioner relating to Your acts or practices that the Privacy Commissioner considers to be in breach of the obligations in this clause; and
- (12) to indemnify MDS and PSMA for:
- (a) any loss, liability, or expense suffered or incurred by MDS, or PSMA arising out of or in connection with a breach of Your obligations under this clause; or
 - (b) any misuse of Personal Information by You; or
 - (c) any disclosure by You in breach of an obligation of confidence whether arising under the *Privacy Act 1988* or otherwise.
- 15.3 The provisions of this clause survive the expiration or earlier termination of this Agreement.
- 16. Updates and New Releases**
- 16.1 If you are under Subscription, MDS will use its reasonable endeavours to provide You with updates of selected components of the MDS Products and PSMA Data on a regular basis and, as a target, at a minimum interval of 12 months subject to payment by You of Annual Access Fees. However, You acknowledge that:
- (1) MDS' ability to provide updates is dependent upon supply of updated data from MDS' sources, including the Data Custodians, and PSMA; and
 - (2) MDS will be under no liability to You in the event of loss or damage suffered by You as a result of MDS' failure to comply with this clause.
- 16.2 Where an update or new release is provided pursuant to clause 16.1, this Agreement will continue to apply in all respects to the update or new release which will be deemed to also be the MDS Products and PSMA Data for the purpose of this Agreement.
- 17. Implied Terms**
- 17.1 Except as provided in this clause all conditions and warranties in respect of the state, quality or condition of the MDS Products and PSMA Data which may apart from this clause be binding on MDS, PSMA, or the Data Custodians, are excluded. Without limiting the foregoing, MDS, PSMA and the Data Custodians do not guarantee the accuracy or completeness of the MDS Products and PSMA Data.
- 17.2 The only conditions and warranties which are binding on MDS, PSMA or the Data Custodians in relation to:
- (1) the state, quality or condition of the MDS Products and PSMA Data; or
 - (2) advice, recommendations, information or services supplied by MDS, PSMA, the Data Custodians, or their employees, servants or agents, to You regarding the MDS Products and PSMA Data;
- are those imposed and required to be binding by statute, if any (including the *Trade Practices Act 1974*).
- 17.3 To the extent permitted by statute, the liability, if any, of MDS, PSMA, or the Data Custodians arising from the breach by MDS, PSMA, or the Data Custodians of any such conditions or warranties referred to in clause 17.2 are, at the option of the liable party, limited to and completely discharged:
- (1) in the case of the MDS Products and PSMA Data, by either the supply by MDS of equivalent property or the replacement by MDS of the MDS Products and PSMA Data; and
 - (2) in the case of advice, recommendation, information or services, by supplying the advice, recommendation, information or services again.
- 17.4 You acknowledge that You do not rely and that it is unreasonable for You to rely on the skill or judgment of MDS, PSMA, or the Data Custodians as to whether the MDS Products and PSMA Data is reasonably fit for any purpose for which it is being licensed.
- 17.5 Except to the extent provided in this clause, You agree that MDS, PSMA, and the Data Custodians have no liability (including liability in negligence) to You for any loss or damage, consequential or otherwise, suffered or incurred by You caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind in the MDS Products and PSMA Data and/or advice, recommendation, information or services provided to You by either MDS, PSMA or the Data Custodians.
- 18. Your Warranties**
- 18.1 You warrant to MDS that You have had an opportunity to view and understand MDS Products and PSMA Data and that You are firmly of the opinion that the MDS Products and PSMA Data is completely suited for Your intended purposes. You have not relied on any representation made by MDS, PSMA or the Data Custodians which has not been stated expressly in this Agreement, or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by MDS or PSMA.
- 19. Your General Indemnity**
- 19.1 You must at all times indemnify and hold harmless MDS, PSMA, the Data Custodians, and their officers, employees and agents ("**those indemnified**") from and against any damages, loss (including loss of profits and any other consequential loss), costs, expenses (including legal costs and expenses) or liability incurred or suffered by any of those indemnified arising from:
- (1) a breach of Your obligations under this Agreement;
 - (2) any wilful, unlawful or negligent act or omission by You; or
 - (3) a breach by a Contractor of its agreement with You.

- 20. Changes to Legislation**
- 20.1 Notwithstanding any other provision of this Agreement, You acknowledge and agree that MDS, PSMA and/or You must comply with any future legislation and/or Government policy which imposes binding restrictions or limitations on MDS; PSMA's or Your use of the MDS Products and PSMA Data, including any restrictions or limitations relating to the supply of MDS Products and PSMA Data or elements thereof to any person, and the terms of this Agreement, and Your agreements with Contractors, will be varied accordingly.
- 21. Audit**
- 21.1 On at least ten (10) Business Days notice to You, and no more frequently than every twelve (12) months, MDS will be entitled itself, or through its representatives, to audit Your books, records and systems for the sole purpose of confirming Your compliance with Your obligations under this Agreement. Any such audit will be at MDS' cost and conducted during normal business hours.
- 22. Termination**
- 22.1 Without limiting the generality of any other clause in this Agreement, MDS may terminate this Agreement and the licence granted pursuant to it immediately by notice if:
- (1) You are in breach of any term of this Agreement and such breach is not remedied within twenty (20) Business Days of it notifying You;
 - (2) You become, threaten or resolve to become or are in jeopardy of becoming subject to any form of insolvency administration;
 - (3) You cease or threaten to cease conducting Your business in the normal manner; or
 - (4) after 12 months have elapsed since the commencement of this Agreement, it is convenient for it to do so.
- 22.2 If this Agreement is terminated under clause 22.1 MDS will compensate You in respect of expenses (excluding loss of profit, loss of revenue, loss of opportunity or similar losses, liabilities or expenses) arising directly from such termination which are substantiated and which are properly incurred by You, to the extent that those expenses cannot be mitigated. No further compensation will be payable in the event of termination pursuant to clause 22.1.
- 22.3 If notice is given to You pursuant to subclause 22.1 (1),(2) or (3), MDS may, in addition to terminating the Agreement:
- (1) repossess (or have delivered from You to MDS at Your expense) any copies of the MDS Products and PSMA Data in Your possession, custody or control;
 - (2) retain any moneys paid by You;
 - (3) be regarded as discharged from any further obligations under this Agreement;
 - (4) pursue any additional or alternative remedies provided by law; and/or
 - (5) require You to comply with any directions given in the termination notice.
- 22.4 You must do all that is possible to mitigate Your losses arising from the termination of the Agreement.
- 23. Relationship**
- 23.1 This Agreement must not be construed as a joint venture or partnership. The relationship between the Parties is that of independent contractors only. You do not have any authority to bind MDS in any respect nor to incur any liability or make any commitment on behalf of MDS without MDS' prior written consent.
- 24. Assignment and Novation**
- 24.1 You may not assign the benefit of this Agreement without MDS' prior written consent.
- 24.2 Any change in the control of 25% or more of Your voting shares will be deemed to constitute an assignment for the purposes of this clause.
- 24.3 MDS may in its absolute discretion consent to the assignment or novation of this Agreement by You subject to such reasonable conditions as MDS chooses to impose.
- 24.4 You will consent to the novation of this Agreement as required by MDS.
- 25. Waiver**
- 25.1 No right under this Agreement will be deemed to be waived except by notice in writing signed by each Party.
- 25.2 A waiver made by MDS pursuant to clause 25.1 will not prejudice its rights in respect of any subsequent breach of the Agreement by You.
- 26. Variation**
- 26.1 The provisions of this Agreement must not be varied except by agreement in writing signed by the Parties.
- 27. Disputes**
- 27.1 Any dispute arising in connection with this Agreement which cannot be settled by negotiation between the Parties or their representatives must be formally referred to the respective Managing Directors or Chairpersons of each Party.
- 27.2 Subject to clause 27.1, before resorting to arbitration or litigation, the Parties must in good faith explore the prospect of mediation.
- 27.3 Nothing in this clause prevents a Party from seeking urgent equitable relief before an appropriate court.
- 28. MDS' Rights**
- 28.1 Any express statement of a right of MDS, PSMA or the Data Custodians under this Agreement is without prejudice to any other right of MDS, PSMA or the Data Custodians not expressly stated in this Agreement or existing at law.
- 29. Survival of Agreement**
- 29.1 Subject to any provision to the contrary, this Agreement must ensure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but must not ensure to the benefit of any other persons.

- 29.2 The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Agreement must remain in full force and effect following the expiration of the Agreement.
- 30. Renewal of Licence**
- 30.1 At Your request, the Licence may in the absolute discretion of MDS be renewed for subsequent terms each of up to 12 months each.
- 30.2 If you are under Subscription, the annual Fees must be paid in advance prior to the commencement of a second or subsequent Licence year. MDS will provide a reminder to You during the 12th month of any License year, in the form of a valid Tax Invoice. Licence Fees for second and subsequent years may be at a different price to the previous year to reflect MDS' cost of doing business and the increase in content of the MDS Products and PSMA Data.
- 30.3 If you are under Subscription based on your usage, You may not continue to use or licence the MDS Products and PSMA Data for any purpose upon termination or expiry of this Agreement. If you are not required to hold a Subscription, then you may continue to use the MDS Products and PSMA Data for internal purposes only and without updates.
- 31. Severability**
- 31.1 If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement must remain otherwise in full force apart from such provisions which must be deemed deleted.
- 32. Entire Understanding**
- 32.1 This Agreement:
- (1) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
 - (2) supersedes any prior agreement or understanding on anything connected with that subject matter.
- 33. Governing Law**
- 33.1 The law of New South Wales governs this Agreement and the Parties submit to the non-exclusive jurisdiction of the courts of New South Wales and the Federal Court of Australia.
- 34. Notices**
- 34.1 Notices under this Agreement may be delivered by prepaid postage or certified mail, by fax transmission or by email transmission. Notices are deemed given five (5) Business Days after deposit in the mail with postage prepaid or certified, or if sent by fax or email transmission upon completion as evidenced by a fax or email transmission record. Where notice is given by fax or email the original document must be posted on the same day as the transmission is sent.
- 35. Costs and Disbursements**
- 35.1 Each Party must pay its own costs and disbursements connected with the negotiation, preparation and execution of this Agreement.
- 36. Further Assurances**
- 36.1 Each Party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.
- 37. Taxes**
- 37.1 You are liable for and indemnify MDS against, GST and all other fees, taxes, duties and charges imposed or levied (whether in Australia or overseas), in connection with the supply of the MDS Products and PSMA Data or other goods and services under this Agreement.
- 37.2 Unless this Agreement expressly provides otherwise, to the extent that any supply made under or in connection with this Agreement is a taxable supply, the consideration for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply.
- 38. MDS Products and PSMA Data**
- 38.1 The MDS Products and PSMA Data included are as per the MDS Tax Invoice.
- 39. Fees and Charges**
- 39.1 The Fees and Charges for the MDS Products and PSMA Data included are as per the MDS Tax Invoice.
- 40. Standard Outcomes that You must achieve when licensing MDS Products and PSMA Data to Contractors**
- 40.1 *Need for agreement*
- You must ensure that You do not provide the Data to a Contractor unless that Contractor has entered into a written agreement with You which achieves the outcomes in this Item 2.
- 40.2 *Scope of Licence*
- All such licences must:
- (a) grant rights in relation to the Data that are no broader than, or represented to be broader than, the licence granted or rights given to You under this Agreement;
 - (b) require the Contractor to comply with the privacy and confidentiality obligations under this Agreement;
 - (c) specify the use/s of the Data that the Contractor is permitted to make;
 - (d) prohibit the Contractor from using the Data for any purpose outside of the purpose of providing consultancy services to You for Your Internal Use; and
 - (e) prohibit the Contractor from sub-licensing its rights to the Data.

40.3 *Intellectual Property*

The Contractor must acknowledge:

- (a) that it has no, and will not assert any. Intellectual Property Rights or other rights in Data apart from the rights granted under its licence with You; and
- (b) no new Intellectual Property Rights will arise in any data set as a result of the Thinning, reduction, or manipulation of the Data in any manner whatsoever.

40.4 *Liability*

The Contractor must acknowledge that:

- (a) PSMA, PSMA Distribution, the Data Custodians and MDS disclaim all non-excludable warranties in relation to the Data and make no representations as to the accuracy or completeness of the Data; and
- (b) PSMA, PSMA Distribution, the Data Custodians and MDS are not under any liability to the Contractor for any loss or damage (including consequential loss or damage) suffered by any person arising from the Contractor's use of the Data.

40.5 *Privacy and Confidentiality*

The Contractor must agree to:

- (a) not use the Data in a way that encroaches upon the privacy of a person;
- (b) subject to anything to the contrary in this Agreement, ensure that its dealings with the Data comply with the National Privacy Principles set out in the *Privacy Act, (Cth)1988* as if it were an 'organisation' for the purposes of that Act; and
- (c) not use the Data for Direct Marketing; and
- (d) at all times protect Confidential Information from unauthorised disclosure.

40.6 *Data integrity and security*

The Contractor must:

- (a) not make changes to the spatial co-ordinates of Data;
- (b) not display or distribute (whether for consideration or not) any component of Data including, for example, address details, XY coordinates, or in vector format over an open electronic network (including the internet);
- (c) securely store and protect the Data from damage and unauthorised use.

40.7 *Termination*

You must reserve the right for You to terminate any agreement You have with Contractors if the agreement between MDS and You is terminated.