



## Katmandoo End User Licence – Terms and Conditions

State of Queensland through the Department of Agriculture and Fisheries and the State of New South Wales Department of Industry, Skills and Regional Development (Licensors)

---

### 1. Commencement of licence

- (a) These Licence terms are made available to the Licensee on or before the Software is first installed by the Licensee.
  - (b) If on the date of these terms are first made available to the Licensee, the Licensee does not wish to be bound, the Licensee must not use or install or, if already used or installed at that time, the Licensee must immediately cease to use the Software and uninstall and destroy all copies of the Software, full or partial.
  - (c) **By installing the Software or using the Software, the Licensee agrees to be bound by the terms of this Licence, effective on and from the date of first installation or use of the Software, whichever is the earlier (Commencement Date).**
- 

### 2. Ownership and licensing

#### 2.1 Ownership

- (a) All Intellectual Property Rights in the Software are owned by or vest in the Licensor upon creation, excluding Third Party Code which is owned by the third party licensor of that code as provided for incorporation in or use with the Software.
- (b) All Intellectual Property Rights in the Applications created by the Licensee vest in the Licensee upon creation.

#### 2.2 License to use

Subject to the terms and conditions of this Licence, the Licensor grants the Licensee a non-exclusive, non-transferable, royalty free, limited licence without licence fees to reproduce and use the Software in its unmodified form on and from the Commencement Date until this Licence is terminated by the Licensor under clause 9.

#### 2.3 License to Distribute to Enterprise End Users

- (a) Where the Licensee is an Enterprise, the Licensor also grants the Licensee a licence to reproduce and distribute the Software to its Enterprise End Users for work within and for the Enterprise only, subject to the terms of this Licence and provided that:
  - (i) the Licensee does not Commercialise the Program, any part of the Software or any Application without a written agreement, signed by the Licensor and Licensee;
  - (ii) the Licensee distributes the Software complete and unmodified and only bundled as part of, and for the sole purpose of running the Applications; and
  - (iii) the Licensee only distributes the Software subject to a license agreement with each Enterprise End User on terms consistent with the terms contained in this Licence, that takes effect upon immediately upon the Enterprise End User first installing or using the Software and terminates automatically upon breach by the Enterprise End User.
- (b) The Licensee will grant access to the Licensor upon its request to audit the Licensee's use and distribution of the Software for the purpose of ensure compliance with this Licence (including distribution to and use by any Enterprise End Users).



- (c) An act or omission by an Enterprise End User that would be taken to breach this Licence had it been done by the Enterprise Licensee will be taken to be a breach of this Licence by the Enterprise Licensee.

## **2.4 Source Code**

The Software may contain Source Code that is provided solely for reference purposes of the Licensee. Such Source Code is the confidential information of the Licensor and the Licensee must not disclose or distribute to any other party or Enterprise End User, or otherwise use, the Software, without the prior written permission of the Licensor.

## **2.5 Third Party Code**

Despite any other provision of this Licence:

- (a) the Software provided under this Licence may incorporate Third Party Code and is provided on the basis that the Licensee complies with the terms and conditions of, and restrictions to, any licences attached to such Third Party Code, in addition to and despite these Licence terms which are modified by the Third Party Code licence terms, in respect of Third Party Code;
- (b) any additional copyright notices and license terms applicable to Third Party Code incorporated into the Software will be set out in a THIRDPARTYLICENSE.txt file available to the Licensee; and
- (c) the Licensee must comply strictly with the requirements of all such Third Party Code licence terms.

---

## **3. Updates of the Software**

- (a) From time to time the Licensor may have available Updates to the Program(s). The Licensee may contact the Licensor and enquire whether any Updates are available. The Licensor may, at its discretion, provide Updates to the Licensee during the Term of the Licence which will be supplied subject to the terms and conditions contained in this Licence.
- (b) Nothing in this Licence will be deemed to impose any obligation on the Licensor to create and make available such Updates to the Licensee.

---

## **4. Reporting of Problems**

The Licensor welcomes reports by the Licensee of any bugs, errors, limitations or other problems with the Program, however this Licence is provided on the basis that the Licensor will be under no obligation to fix any such problems encountered by the Licensee.

---

## **5. Publicity, names and logos**

- (a) The parties agree that the Licensor has sole responsibility for all media announcements or statements regarding the Software. The Licensee must not make any media or public announcements statements about the Software and must refer any media enquiries regarding the Software to the Licensor through the Licensor's Contact Person in clause 11.
- (b) The Licensee must use the Citation listed in clause 11 whenever referencing the Software in any publication including an Application.
- (c) The Licensee must obtain written consent from the Licensor before it uses the name, trade mark or logo of any party of the Licensor other than as permitted under clause 5(b) above.
- (d) The Licensee must ensure that the Software is listed as the intellectual property of the Licensors in the IP Register and Licensee's Background IP section of any project proposals or applications when the Licensee proposes to use the Software in the performance of the project.



---

## **6. Restrictions**

- (a) The Licensee must not decompile, disassemble or reverse engineer the Software. The Licensee must not copy, re-use, translate or adapt any database schema for use in any other Application other than its intended use.
- (b) The Licensee must not modify the Software without obtaining the Licensor's prior written consent. All Modifications vest in the Licensor upon their creation, and the Licensee must promptly provide the details of all Modifications to the Licensor.

---

## **7. Limited Warranty**

- (a) The Licensee uses the Software and any Third Party Code at its own risk. The Licensor does not warrant the Software or Third Party Code is error free, up to date or that it meets the Licensee's particular requirements.
- (b) Unless otherwise specified in this Licence, all express or implied conditions, representations and warranties, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement of third party rights are disclaimed, except to the extent that these disclaimers are held to be legally invalid.

---

## **8. Limitation of liability, release and indemnity**

### **8.1 No liability for consequential or indirect loss**

The Licensor and its Representatives will not in any circumstances (including for negligence) be liable for any loss of revenue, loss of profit, loss of anticipated savings or business, loss of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of data or goodwill, loss of reputation, or any indirect or consequential loss, whether arising in contract, tort (including negligence) or otherwise, in connection with this Licence.

### **8.2 Limitation of liability and release**

- (a) To the extent permitted by law, the Licensor will not be liable for any Claim however caused in connection with or arising out of the performance of the Software, from the Licensee's reliance on the Software, arising out of or related to the use or inability to use the software, even if the Licensor has been advised of the possibility of such Claims.
- (b) The Licensee releases to the full extent permitted by law, the Licensor and its Representatives from all actions, claims, proceedings or demands and in respect of any loss, death, injury, illness or damage (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) that the Licensee has, or may have in the future, against the Licensor or its Representatives in respect of or in any way arising out of the exercise of the Licence or use of the Software or any Applications or products derived from the Software.

### **8.3 Indemnity**

- (a) The Licensee indemnifies the Licensor and its Representatives against all liability, loss, costs and expenses (including any actions, claims, proceedings or demand brought by any third party, and any legal fees, costs and disbursements on a solicitor and own client basis) arising from or incurred in connection with:
  - (i) any exercise of the Licence or the creation or use of any Applications;
  - (ii) any default by the Licensee or the Licensee's Representatives or Enterprise End Users (if any) under this Licence;
  - (iii) any unlawful, wilful or negligent act or omission of the Licensee, the Licensee's Representatives, Enterprise End Users (if any) or any person for whose conduct the Licensee is liable;



- (iv) personal injury (including sickness and death) or property damage or loss in connection with the exercise of this Licence or a breach of this Licence by the Licensee; or
  - (v) any infringement or alleged infringement of any IP Rights or Moral Rights of any person, which infringement or alleged infringement occurred in respect of this Licence, the Software or any Application.
- (b) The Licensee's liability to indemnify the Licensor under clause 8.3(a) will be reduced proportionally to the extent that any negligent act or omission or breach of this Licence by the Licensor caused the loss or liability.
  - (c) The indemnity granted in clause 8.3(a) is in addition to and not exclusive of any other remedies the Licensor may have against the Licensee at law.
  - (d) It is not necessary for the Licensor to incur expense or to make a payment before enforcing a right of indemnity conferred by this Licence.

---

## 9. Term and Termination

- (a) This Licence is effective and will continue in force until terminated by the Licensor or Licensee under this clause 9.
- (b) Termination of this Licence by a party does not in any way limit that party's right to claim and recover loss or damage for any earlier breach of the agreement by the other party, but will not give rise to any right to claim or recover loss or damage arising out of the termination.
- (c) The Licensee must cease use of the Software and destroy all copies within its possession or control of the Software, full or partial, immediately on termination of this Licence.
- (d) The Licensee may terminate this Licence at any time by destroying all copies within its possession or control of Software, full or partial.
- (e) This Licence will terminate automatically, immediately without notice from the Licensor, if the Licensee fails to comply with any provision of this Licence.
- (f) Either party may terminate this Licence immediately should any Software become, or in either party's opinion be likely to become, the subject of a claim of infringement of any intellectual property right.
- (g) The Licensor may otherwise terminate this Licence by giving 30 days' notice to the Licensee.
- (h) For clarity, a copy of Software, full or partial, in the possession or control of an Enterprise End User is taken to be within the possession or control of the Enterprise Licensee.

---

## 10. General Terms

### 10.1 Survival

The following clauses survive termination or expiration of this Licence: clause 2 (Ownership and licensing), clause 5 (Publicity, names and logos), clause 7 (Limited warranty), clause 8 (Liability, release and indemnity), clause 9(c) and clause 9(b) (Obligations on termination) and any other clause which by its nature is intended to survive this Licence.

### 10.2 No waiver

- (a) If a Party fails to exercise any of its rights under this Licence, or delays exercising those rights, that failure or delay will not operate as a waiver of those rights or any future rights, or stop the Party from relying on the terms of this Licence to their full force and effect.
- (b) Any waiver by a Party of a breach of this Licence must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.

### 10.3 Entire Agreement



This Licence contains the entire agreement between the parties as to the matters referred to in this Licence. It supersedes all prior contracts, obligations, representations, conduct and understandings.

#### 10.4 Variation

A variation of any term of this Licence must be in writing and signed by the parties.

#### 10.5 Assignment:

The Recipient must not assign or novate its obligations or interests under this Licence without the prior written consent of the Licensor.

#### 10.6 Governing law:

The laws of Queensland, Australia, govern this Licence and the Parties submit to the non-exclusive jurisdiction of the courts of Queensland.

---

### 11. Details

#### 11.1 Citation

Butler, D.G., Shrestha, A., Hassall, M.G. and Cullis, B.R. (2010) Katmandoo, a bioscience data management system, Queensland Department of Agriculture and Fisheries and New South Wales Department of Primary Industries, <http://www.katmandoo.org>.

#### 11.2 Contact person.

Licensing or media enquiries: Helen Kamel [helen.kamel@daf.qld.gov.au](mailto:helen.kamel@daf.qld.gov.au)  
Technical enquiries: Michael Hassall [michael.hassall@daf.qld.gov.au](mailto:michael.hassall@daf.qld.gov.au)

---

### 12. Definitions and Interpretation

#### 12.1 Interpretation

- (a) Unless the context requires otherwise, in this Licence:
- (i) headings are for convenience only and do not affect the interpretation of this Licence;
  - (ii) words in the singular include the plural and vice versa;
  - (iii) the meaning of general words is not limited by specific examples introduced by “including” or “for example” or similar expressions;
  - (iv) a reference to a “person” includes an individual, the estate of an individual, a body corporate, an authority, a government department or agency, an association or a joint venture (where incorporated), a partnership and a trust;
  - (v) a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including that their respective directors, officers, employees, agents and persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
  - (vi) if more than one person is identified as the Licensee, then that expression refers to them, and the obligations of the Licensee under this Licence bind them, jointly and severally;
  - (vii) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (b) Nothing in this Licence is to be interpreted against a party solely on the ground that the party put forward this Licence or any part of it.



- (c) Where an expression is defined, any other grammatical form of that expression has a corresponding meaning.

## 12.2 Definitions

In this Licence:

- (a) the following words have the meaning ascribed to them in the Details: Citation, Contact Person; and
- (b) the following words commencing with a capital, in bold, are defined as follows:

**Application** means computer programs developed by the Licensee which incorporate any part of the Software, but exclude all Modifications.

**Binary Code** means machine-readable, executable code of a computer program.

**Claim** means any cost, expense, loss, damage (including indirect, special, identical, consequential loss and loss of anticipated revenue), claim, action, proceeding or other liability (whether in contract, tort or otherwise), however arising and includes legal costs on a full indemnity basis, including in relation to any right of action or claim to compensation which may be brought or claimed against the Licensee or the Department or in respect of which the Licensee or the Department may become liable in connection with a breach of this Licence or the Licensee's exercise of the rights under this Licence.

**Commencement Date** has the meaning given in clause 1(c).

**Commercialise**, in relation to the Software, means to:

- (a) reproduce for the purpose of offering for sale or hire;
- (b) offer for sale or hire or otherwise exploit an Application incorporating any part of the Software;
- (c) provide a fee-for-service which incorporates any part of the Software; or
- (d) licence any third party to do any of those things; regardless of whether any revenue is generated or intended to be generated.

**End User** means an individual who accesses or uses the Software.

**Enterprise** means a person, other than an individual, under the interpretation in clause 12.1(a)(iv).

**Enterprise End User** means an End User who is a Representative of a Licence that is an Enterprise.

**Intellectual Property Rights** includes all rights in relation to copyright, inventions, trademarks, logos, trade secrets and all other rights comprising the Software but does not include Moral Rights.

**Licence** means these terms and conditions for the use of the Software by the Licensee.

**Licensee** means the Enterprise or End User who is provided with or granted access to the Software by the Licensor and who installs or uses the Software and, in the case of an Enterprise, includes (unless the context requires otherwise) each Enterprise End User that the Enterprise distributes the Software.

**Licensor** means jointly the State of Queensland through the Department of Agriculture and Fisheries and the State of New South Wales Department of Industry, Skills and Regional Development.

**Modifications** means any modifications to the Software whether created by or on behalf of the Licensor or the Licensee, and includes any development, update, enhancement or improvement to any part or all of the Software, including source code changes, developments involving release management, reengineering source code or functionality, but does not include Applications.

**Programs** has the meaning given in the definition of Software.

**Representatives** means an employee, agent, officer, director, contractor, subcontractor or other authorised representative of a party.



**Software** means the Binary Code, any other machine readable materials (including, but not limited to, libraries, source files, header files, and data files), any database schema (that is the logical database description), any Updates, user manuals, programming guides and other documentation which together constitute the **Program(s)** provided to or made accessible for the Licensee by the Licensor under this Licence, including any Third Party Code incorporated in or with it, Modifications, Updates, to the extent incorporated in or provided with or as part of the relational database and user interface software application known as 'Katmandoo' or 'Katmandoo database'.

**Source Code** means any materials, including without limitation flow charts, logic diagrams, binaries and object codes, whether in machine or human readable form, which are necessary to allow a reasonably skilled programmer to analyse, improve, modify, enhance, or update the Software without reference to any other person.

**Third Party Code** means any Source Code or Binary Code provided by a third party to a Licensor and incorporated in or used with the Software.

**Updates** means any patch or piece of software supplied by the Licensor which is designed to update, fix problems or correct errors including fixing bugs, replacing graphics and improving the usability or performance of the Program(s) or any part or all of the Software.