

Overseer Terms of Use

Last updated on 30-July-2021

1. About these terms

Kia Ora, welcome to Overseer, an on-farm decision support software service that enables better environmental outcomes and more value from farms.

By signing up to or using Overseer, you accept these terms of use and also our [privacy policy](#). Please read these terms carefully. They are a contract between you (the person or entity using Overseer) and us (Overseer Limited, New Zealand company no. 5920922, NZBN 9429042247791).

Where a Representative of a company or other entity creates a User Profile in the name of that entity, or using an email address controlled by that entity, then the contract is between the entity and us, and the User Profile is treated as belonging to the entity and not the Representative.

Overseer will evolve over time as we continue to improve our service and the science modelling behind it. We may change these terms of use from time to time. We will publish these changes on the Overseer website at least 14 days before they take effect. We can shorten this period for changes we consider are necessary to comply with law. You accept you will be bound by these terms as they are updated.

2. Glossary

In these terms:

Analysis means a Year End Analysis or a Scenario or Predictive Analysis.

Farm Account means an account in Overseer that represents a single notional farming operation to be modelled.

Farm Account Data means any information held in Overseer and associated with a Farm Account.

Farm Account Administrator means an Organisation that has administration privileges to a Farm Account but is not the Farm Account Owner.

Farm Account Owner means an Organisation designated in Overseer as a "Farm Account Owner" for a particular Farm Account.

Input Data means any information or material that a Registered User uploads or enters into Overseer.

Organisation means an individual or user group designated in Overseer as an "Organisation".

Organisation Administrator means the Registered User(s) with privileges to invite and remove other Registered Users to/from an Organisation.

Representative of an entity means any director, officer, employee, agent or other representative of that entity.

Registered User means an individual with a User Profile in Overseer.

Scenario or **Predictive Analysis** means the prospective analyses and associated data produced or stored in Overseer, intended to represent one or more hypothetical future states of part or all of the farming operation being modelled in a given Farm Account.

User Profile means an individual user profile in Overseer.

Year End Analysis means a retrospective analysis and associated data produced or stored in Overseer, intended to represent the quasi-equilibrium actual state of part or all of the farming operation being modelled in a given Farm Account.

3. Registering with us

Registering with Overseer creates a User Profile.

You promise that all information you provide when registering or updating your User Profile will be true, accurate and correct.

You must not use Overseer if you are an individual under the age of 18. If you are under the age of 18 and have a legitimate reason to use Overseer, please contact our helpdesk at helpdesk@overseer.org.nz.

You are responsible for protecting your passwords and other private user credentials and for any usage of your user credentials. You must notify us immediately on becoming aware of any actual or suspected unauthorised use of your user credentials

4. Using a Farm Account

a) Overview

A Farm Account represents a notional farming operation to be modelled in Overseer. To create a Farm Account, you will need to nominate a Farm Account Owner. A Farm Account Owner represents the farming operation being modelled.

Each Farm Account must be used to model only a single farming operation. This may include the modelling of adjacent or additional land to the extent that it is relevant to nutrient and/or greenhouse gas modelling for that farming operation.

b) Access to a Farm Account

Your access to a Farm Account in Overseer is based on the Organisation your User Profile is associated with.

An Organisation Administrator may invite users to join their Organisation. A Registered User accepting an invitation to join an Organisation will move from its current Organisation to the new Organisation.

Farm Account Owners can grant or revoke access for Organisations to the Farm Account.

Farm Account Administrators can grant access for Organisations to the Farm Account and revoke any access they have granted previously.

These specific Farm Account Owner and Farm Account Administrator actions are available only to administrative users within the relevant Farm Account Owner and Farm Account Administrator Organisation.

When an Organisation is granted access to a Farm Account, all Registered Users within that Organisation will have access to the Farm Account and be able to create Analyses and view, download, edit or remove any Analyses shared with that Farm Account.

If you are granted access to a Farm Account by a Farm Account Owner or Farm Account Administrator, you accept their control of the Farm Account as outlined above.

c) If you are a Farm Account Owner

A Farm Account Owner can remove themselves from the Farm Account. If you do this, you acknowledge you will cease to have any rights in relation to the Farm Account.

A Farm Account Owner can add or remove other Organisations as Farm Account Administrators. If you do this, keep in mind they will be able to grant access for other Organisations to the Farm Account as outlined in these terms.

A Farm Account Owner can assign other Organisations as additional Farm Account Owners. If you do this, keep in mind they will be able to grant and revoke access for other Organisations to the Farm Account as outlined in these terms, and they will be able to remove other Farm Account Owners.

These specific Farm Account Owner actions are available only to the Farm Account Owner.

d) Analyses

Year End Analyses are available to all Organisations who have access to the Farm Account.

If you create a Scenario or Predictive Analyses, by default it is shared with your Organisation. You can share private Scenario or Predictive Analysis with the Farm Account Owner, or with all Organisations who have access to the Farm Account.

If you publish an Analysis to an Organisation (including Regional Councils), a copy of that Analysis information is made available to that Organisation to view and download. You cannot change, reverse or withdraw that copy once published.

Analyses are created by Registered Users for their own use. Unless otherwise agreed in writing, we accept no responsibility for any use of, or reliance on any Analysis by any other person. We will not be liable on any basis for any loss, damage or expense arising from that use or reliance.

e) Farm Account Data

If you enter, upload or share information to a Farm Account, you accept that from then on the information may be accessed and shared as defined in these terms of use. Once Registered Users have copied or downloaded information from a Farm Account, we do not control their subsequent use or sharing of that information.

If a Farm Account is no longer used we may choose to delete that Farm Account and/or associated Farm Account Data.

We can retain Farm Account Data indefinitely, but for so long as we do, we will continue to comply with the restrictions in this section and section 5.

Our obligations relating to Farm Account Data are owed solely to the person or entity that controls the Organisation designated as Farm Account Owner.

You agree that you cannot and will not restrict any Farm Account Owner's use of their Farm Account(s), or their access to or sharing of Farm Account Data associated with their Farm Account. You also permanently waive any rights you may have outside these terms to impose or enforce any current or future restrictions of this kind on any Farm Account Owner. This section is for the benefit of the Farm Account Owner and can be enforced against you by the Farm Account Owner as a third-party beneficiary, although we can change this section without the need for the consent of any third party beneficiary. This does not affect any agreement to transfer a Farm Account as part of the sale and purchase of a farm or farming business.

5. Input Data

a) Your obligations

Where you enter or upload Input Data you promise that:

- the Input Data does not infringe any third party intellectual property rights
- the Input Data complies with all applicable laws
- you have all the authorisations needed for you to upload the Input Data, and
- we do not need to obtain any further licence, right or permission from a third party to deal with the Input Data as permitted by these terms.

Where another Registered User uploads personal information about you into Overseer, you acknowledge that although the information is stored by in our systems, it is held by and under the control of that Registered User and/or the relevant Farm Account Owner.

If you wish to exercise your rights to access personal information that we hold about you under the Privacy Act 1993 you can contact us at helpdesk@overseer.org.nz.

b) Our use of Input Data

Subject to section 4 you retain any and all rights that you may have to Input Data uploaded to Overseer, and any new intellectual property rights created through your preparation of Analyses.

You give us, our contractors and agents permission to store and process all Input Data and Analyses as required for the purposes of operating, maintaining and improving Overseer.

We will not share your Input Data or Analyses with anyone else without your approval, although it may be shared through the permissions granted in accordance with section 4.

We may aggregate Input Data and/or Analyses with other data, and use and share the results with third parties for any purpose we choose, but only where the data is aggregated to the point where we are satisfied, acting reasonably, that it does not reveal any information about an individual farm identifiable from that data, or where the recipient already has access to the underlying data in accordance with section 4.

We may choose to delete or block Input Data at any time where we consider it necessary to comply with law, or to protect ourselves or others from harm or loss.

We may also disclose Input Data to others where we reasonably consider it necessary to comply with law.

Our rights under this heading will continue indefinitely.

6. Pricing and payment

a) Farm Account subscription

Every Farm Account requires a subscription to produce Analysis results.

You can check the Overseer website for subscription pricing and payment details. Payments for subscriptions must be made in line with our published pricing and payment details. Unless stated otherwise, our pricing is in New Zealand dollars.

If the subscription fee for a Farm Account is not paid when due, the Farm Account subscription will not renew, and the Farm Account will no longer produce Analysis results.

The subscription can be reinstated by payment of the then-current subscription fee.

b) Changes to pricing and payment

We may change pricing and payment details from time to time. This will not affect any subscription period that has already been pre-paid at the time of the change.

We will notify the change at least 30 days in advance, by posting a notice on the Overseer website.

c) Refunds

No refunds will be provided on Farm Account subscriptions that have generated Analysis results. Refunds on unused accounts is at our discretion and can be requested through the Helpdesk.

7. Your use of Overseer

a) Restrictions on using Overseer

You must not use Overseer in a way that infringes intellectual property, defames someone, breaks the law, or violates the privacy or other rights of any person.

You must not use Overseer to:

- upload, transmit, or distribute any malware or spyware
- interfere with or disrupt any servers or networks connected to Overseer
- attempt to gain unauthorised access to Overseer or any Farm Account
- misrepresent yourself as another person or entity
- misrepresent yourself as having authority from another person or entity, or having greater authority than you have actually been given, or
- do anything that would expose us to any liability or cause us to be in breach of any law or regulation of New Zealand or any other jurisdiction.

Unless we specifically agree otherwise in writing, you must not say or do anything that may lead others to believe that you are endorsed by or associated with us.

b) Access limitations

We may restrict or revoke your access to Overseer at any time, with or without giving you notice, if you breach these terms and we reasonably consider that the breach (alone or together with any past breaches) exposes us to a cost or risk of some kind, or may have a negative impact on us or our products, services or systems.

We can also restrict or revoke your access to Overseer at any time if required by law.

We will reinstate your access once we are reasonably satisfied that the grounds for the restriction or revocation have been remedied and are unlikely to reoccur.

8. Intellectual property rights

We and our third party licensors own all intellectual property rights in Overseer, including all components of the website, and all content made available through Overseer from time to time, subject to section 5. You may use Overseer as made available by us from time to time, subject to these terms. This does not give you any rights in the website, or any of its components or content, and you must not copy, modify, adapt, reproduce or republish any of them.

Where you provide us with feedback or suggestions about Overseer, you promise us that this information is not confidential to you or any other person, and you agree that we can use it as we see fit, without any obligation to you.

9. Qualifications and exclusions

a) Third party components

We may identify particular content or functionality as being provided by a third party provider. We are passing-on that content and functionality, and unless stated otherwise, we are not responsible for its accuracy or completeness. We are not responsible for any use or reliance placed on that third party content and functionality by you or any third parties.

b) S-map soils data

Overseer incorporates S-map soils data, licensed from Landcare Research New Zealand Limited (also known as Manaaki Whenua – Landcare Research). You must not extract or copy in bulk any S-map soils data provided through Overseer.

You may only use S-map soils data for purposes that relate directly to Overseer. Use of S-map soil data for any other purpose without the prior written consent of Landcare Research New Zealand Limited is prohibited.

c) NIWA climate data

Overseer incorporates NIWA climate data, licensed from National Institute of Water and Atmospheric Research Limited. You must not extract or copy in bulk any NIWA climate data provided through Overseer.

You may only use NIWA climate data for purposes that relate directly to Overseer. Use of NIWA climate data for any other purpose without the prior written consent of National Institute of Water and Atmospheric Research Limited is prohibited.

NIWA makes no representations or warranties regarding the accuracy, completeness or fitness for the purpose of the data used. Any reliance on or other use of the data by a third party is entirely at the third party's own risk. NIWA accepts no liability for any loss or damage, whether direct or indirect, consequential or otherwise arising from the reliance on or use of the data.

d) Google Maps

Overseer incorporates services from Google Maps. If you choose to use our service you accept the Google Maps/Google Earth [Additional Terms of Service](#) and the [Google Privacy Policy](#).

e) Interruptions and errors

Like any online service, we cannot guarantee that Overseer will be uninterrupted or error free. It is up to you to take any precautions necessary to ensure you do not incur losses or costs in the event that Overseer is affected by an interruption or error. We are not liable for any loss or corruption of data.

We will use reasonable skill and care in our development and operation of Overseer.

To the extent permitted by law, we exclude all other express and implied warranties and representations.

f) Input Data

We do not review or control Input Data for accuracy or completeness. You are responsible for any use or reliance placed on Input Data by you and any third parties.

g) Changes to Overseer

We can modify, suspend or discontinue all or part of Overseer at any time, with or without notice.

However, we will give you at least 90 days' notice before implementing any change that substantially reduces the functionality of Overseer, other than temporary changes required for maintenance or upgrade activity.

10. Indemnity and liability

a) You may be required to indemnify us

As far as permitted by law, and without limiting any other rights we may have under these terms or at law, you agree to indemnify us against all costs, losses, expenses and liabilities that we suffer or reasonably incur in connection with any third party claim made or brought against us, where the claim is wholly or partly attributable to your breach of these terms.

However, you will not be liable to the extent that we have caused or contributed to such losses through our own negligence, breach of these terms or unlawful conduct.

b) You may need to pay for litigation costs

Where we are required to give evidence or otherwise be involved in any proceedings relating to a dispute between you and any third party relating to a Farm Account, you must pay our reasonable costs, except to the extent that we have caused or contributed to those costs through our own negligence, breach of these terms or unlawful conduct.

c) Limitations on our liability

As far as permitted by law, we are not liable to you for any loss of profits, loss of opportunity, loss of business or loss of contract, or any indirect or consequential loss, or any exemplary, incidental, special or punitive damages, arising from or in connection with Overseer or these terms.

In any case, our total liability for any loss or damage you suffer in connection with Overseer or these terms, from all events occurring in any 12 month period, will not in any circumstance exceed the standard annual subscription payable for a Farm Account during that 12 month period. If the standard annual subscription changed during that period, the highest standard annual subscription price will be used.

The limitations and exclusions above apply to all liability (including for negligence), regardless of the legal basis of the claim.

The limitations and exclusions above also apply for the benefit of Landcare Research New Zealand Limited as the provider of the S-map soils data to Overseer.

11. Consumer Guarantees Act and Fair Trading Act

To the extent that you are in trade, and are using Overseer in trade, you agree that the Consumer Guarantees Act 1993 does not apply. We do not provide any express guarantees in relation to Overseer, other than as expressly set out in these terms.

- To the extent that you are in trade, and are using Overseer in trade, you agree that:
- in accepting these terms you have not relied on any representations or other conduct by us
- along with our privacy policy, these terms are the entire agreement between you and us regarding your use of Overseer, and
- to the extent necessary to give effect to the two points above, you agree to contract out of section 9, 12A, and 13 of the Fair Trading Act 1986.

The terms under this heading will apply only if and to the extent that it is legally permitted to contract out of the Consumer Guarantees Act 1993 or Fair Trading Act 1986, as applicable. In all other respects, your rights under those Acts remain unchanged.

12. Other matters

These terms are governed by New Zealand law. You submit to the non-exclusive jurisdiction of the courts of New Zealand in relation to all disputes arising out of or in connection with these terms of use and/or the use of Overseer.

If at any time we refrain from enforcing a provision of these terms of use, or give you extra time or other leeway to comply, this does not mean we have waived that provision or given up our rights to enforce that provision, or any other provision.

If it turns out that a particular term is unenforceable, invalid, or in conflict with the law, that part is replaced with a provision which, as far as possible, accomplishes the original purpose of that part, without the invalidity, unenforceability or conflict with law. The remaining terms of use will continue to be binding on the parties.

Nothing in or done in connection with these terms of use creates any relationship of employment, partnership, joint venture, or agency between you and us, except where expressly stated otherwise.

In these terms of use, unless the context requires otherwise:

- a requirement not to do something includes a requirement not to encourage, authorise or cause that thing to be done
- the fact that we have written these terms of use does not mean that ambiguity will automatically be interpreted against us
- a reference to a party to these terms of use or any other document includes that party's personal representatives/successors and permitted assigns
- a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations.