

INVESTIGATION INTO CLIMATE CHANGE DATA MANAGEMENT IN THE EASTERN AND SOUTHERN CARIBBEAN (ESC)

DATA MANAGEMENT PROTOCOL

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GLOSSARY OF TERMS

Aarhus Convention - an international, legally binding instrument that addresses access to information, public participation in decision-making and access to justice in environmental matters	FAO – Food and Agriculture Organisation of the United Nations
AWS – Automatic Weather Stations	GCOS - Global Climate Observing System
CAMI - Caribbean Agro-meteorological Initiative	GFCS – Global Framework for Climate Services
CANARI – Caribbean Natural Resources Institute	GLOSS - The Global Sea Level Observing System
CARDI – Caribbean Agricultural Research and Development Institute	INSMET – Instituto de Meteorología de la República de Cuba
CARPHA – Caribbean Public Health Agency	IOC - Intergovernmental Oceanographic Commission
CCAP – USAID Climate Change Adaptation Program	IP – Intellectual Property
CCORAL – Caribbean Climate Online Risk and Adaptation Tool	IPCC - Intergovernmental Panel on Climate Change
CDEMA – Caribbean Disaster Emergency Management Agency	LAC – Latin American and Caribbean countries
CEOS - Committee on Earth Observing Satellites	NOAA – National Oceanic and Atmospheric Administration
CERMES – Centre for Resource Management and Environmental Studies	OECS – Organisation of Eastern Caribbean States
CIMH – Caribbean Institute for Meteorology and Hydrology	OGC - Open Geospatial Consortium
Coordination Committee - technical experts for the particular type and scope of data that the data management protocol platform intends to manage	Platform Sponsor - group or organisation that intends to create a platform that implements the protocol to enhance the management of a particular type and scope of data across several Designated Entities
C-READ - Caribbean Regional Environmental and Atmospheric Database	PRECIS - Providing Regional Climates for Impacts Studies, Hadley Centre, UK Met Office
CRFM - Caribbean Regional Fisheries Mechanism	Protocol – a standard set of rules and guidelines for how data is used and managed
CREWS - Coral Reef Early Warning Systems	RCM – Regional Climate Model
Data Lifecycle - the complete process of interrelated activities performed on a dataset during its lifetime	Support Mechanism – puts in place features and reinforcements for the Designated Entities such that they can improve and enhance the key performance indicators of the services they offer.
Designated Entity - entity that implements the protocol for a particular type and scope of data such as those belonging to a particular platform	TRIPS – Trade-related Aspects of Intellectual Property Rights Agreement
EDM Framework – NOAA Environmental Data Management Framework (2013) on policies, standards and tools being considered or developed across NOAA for environmental data management	UNFCCC - United Nations Framework Convention on Climate Change
EDMC – NOAA Environmental Data Management Committee	UNCDB – United Nations Convention on Biodiversity
ESC – Eastern and Southern Caribbean	UNCCD – United Nations Convention to Combat Desertification
EU-GCCA – European Union Global Climate Change Alliance	USAID - United States Agency for International Development
	WCRP - World Climate Research Programme
	WCT - WIPO Copyright Treaty
	WIPO - World Intellectual Property Organization
	WIS – WMO Information System
	WMO – World Meteorological Organization
	WTO – World Trade Organization

I. INTRODUCTION

1.1. OVERVIEW

The purpose of the data management protocol is to provide a **guideline, best practices, and a standard procedure for enhancing the management and the transmitting and receiving of climate data** in the Eastern Caribbean States and the wider CARICOM region.

The protocol describes **mechanisms and functional requirements for a data management platform**, and **recommendations** on how to enhance the regional operations in the Caribbean Region.

The protocol also covers **functionalities of government and IT** (information technology) services required for managing the different data products needed for evidence-based decision-making (taking into account, amongst others, the Caribbean Regional Environmental and Atmospheric Database - C-READ - platform) and incorporates legal and IP (intellectual property) considerations, such as **necessary agreements and licensing arrangements** to support data sharing.

The development of this protocol took into account, amongst others, outcomes and recommendations from an investigation into data management in the Eastern and Southern Caribbean - supported by empirical findings of the performance of agencies, countries and data sharing networks (Maxam et al, 2019).

It also incorporates experience from other regional approaches in the Anglophone Caribbean, such as the climate modellers consortium (CMCM 2018), the Caribbean Community Climate Change Centre's Clearinghouse, the Caribbean Regional Climate Centre, the EU-GCCA programme and the CCORAL initiative.

1.2. PRIMARY FUNCTIONAL REQUIREMENTS & OBLIGATIONS OF THE PROTOCOL

The protocol provides guidelines and best practices for any organisation that wants to improve on data management at national and even regional levels. Beyond this, it also provides a **governance structure and standard procedures for the development of platforms** that facilitate, measure and support the enhancement of data management practices for the specific type of data they cover.

A *platform* that implements the protocol for a specific type of data must establish a **Coordination Committee** that will invite national and regional data collection and production centres, processing centres and archives to become **Designated Entities** implementing the protocol. Designated Entities that join the platform must provide **defined access and discovery services** through which data products are shared. They could also **provide value-added and / or archival services**. The protocol requires regular assessments of the performance of these services (using **key performance indicators** defined in the protocol), and **data management plans** for the major data products they serve.

The platform must also establish a **support mechanism** for Designated Entities that enables suitable national, regional and international cooperation; approaches to more sustainable cost recovery; and the provision of other resources. This should be strictly targeted to improving and enhancing of the key performance indicators of the services, and the quantity and quality of the data products offered. The support provided should therefore focus on **enhancing the entity's existing strengths** and on **opening-up key bottlenecks** in their provision of the services, and the implementation of relevant data management plans under the protocol.

1.3. KEY DATA PARAMETERS

Climate data in the scope of this protocol may include various types of data. These are outlined in Table .

Table 1 - List of Essential Climate and Hydrometeorological Data

LIST OF ESSENTIAL DATA	GLOBAL BODY/PROTOCOL/CLIMATE SERVICE PRODUCT FROM WHICH LIST IS GENERATED
A. OBSERVED HYDROMETEOROLOGICAL DATA	
<u>A.1 Essential Weather Variables:</u>	
Rainfall/ Precipitation	UNFCCC National Circumstances / Climate Services for Agriculture / hydrometeorological drought (WMO-GWP 2016) ¹ / etc.
Air temperature	UNFCCC National Circumstances / Climate Services for Agriculture / hydrometeorological drought (WMO-GWP 2016) etc.
Pressure	Storms and hurricanes
Wind Speed and Direction	Storms and hurricanes
Relative Humidity	Agricultural drought ² , Heat Index
Sunshine / Radiation	UNFCCC National Circumstances / Climate Services for Agriculture
Evapotranspiration	Agricultural drought (WMO-GWP 2016)
<u>A.2 Essential Hydrographic Variables:</u>	
Groundwater levels	Hydrological drought
Mean Sea-Level	UNFCCC National Circumstances
Water level surface elevation (“Stage”) of Streams	Hydrometric flood monitoring
Volumetric Discharge (“Flow”) of Streams	Hydrometric flood monitoring
B. GREENHOUSE GAS INVENTORIES	
C. PROJECTIONS of CLIMATE DATA / CLIMATE MODELS	
D. DERIVED PRODUCTS (including sector-specific products)	
E. CLIMATE CHANGE-RELATED DOCUMENTS	
F. OBSERVED TOPOGRAPHIC DATA	
Topography - elevation	A precondition to model impacts of sea level rise and flooding
Topography - bathymetry	A precondition to model impacts of sea level rise and flooding

¹ World Meteorological Organization (WMO) and Global Water Partnership (GWP), 2016: Handbook of Drought Indicators and Indices (M. Svoboda and B.A. Fuchs). Integrated Drought Management Programme (IDMP), Integrated Drought Management Tools and Guidelines Series 2. Geneva.

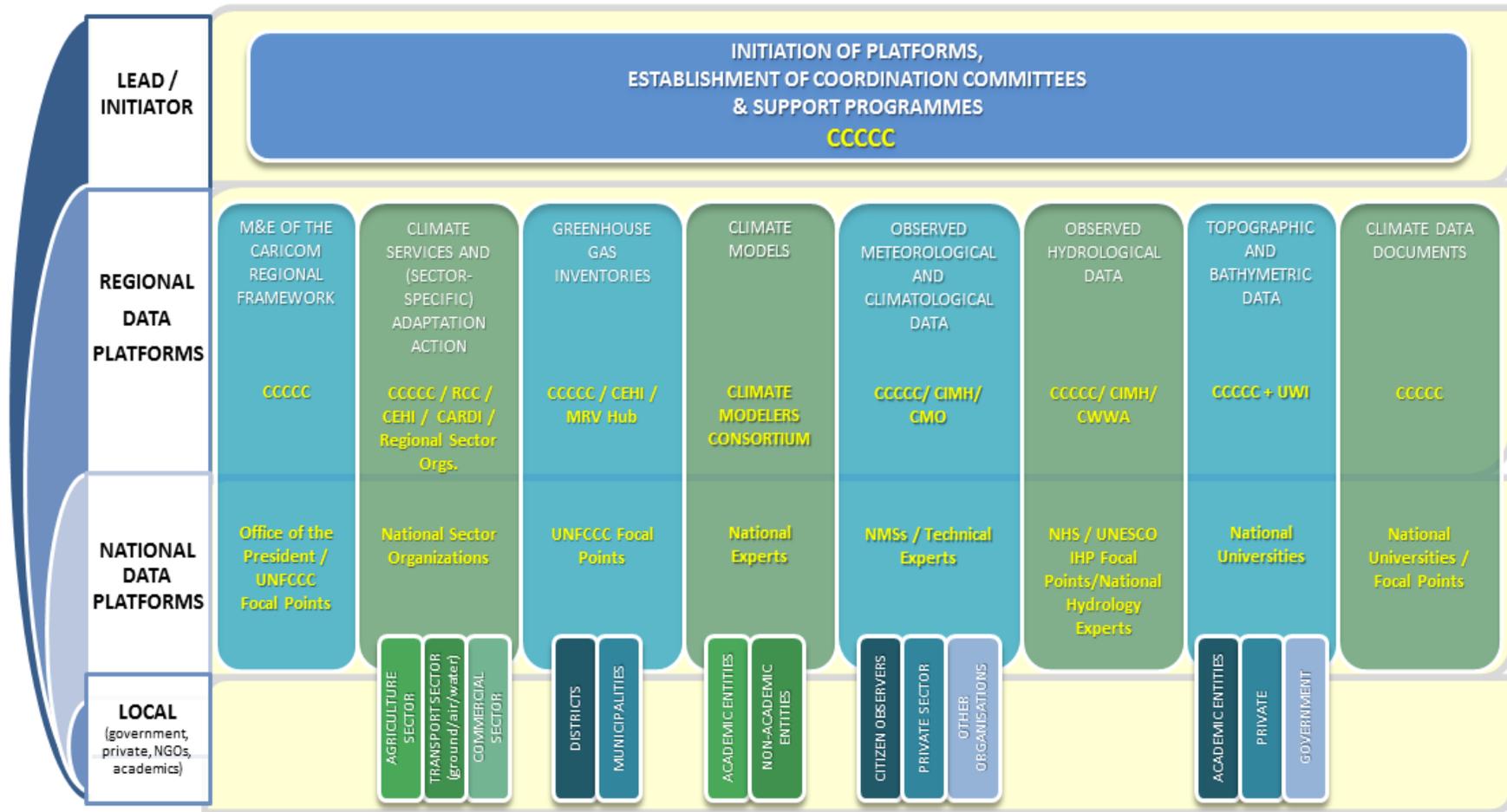


Figure 1 – Proposed governance structure for data cluster platforms as it relates to the protocol

2. REFERENCE FRAMEWORK

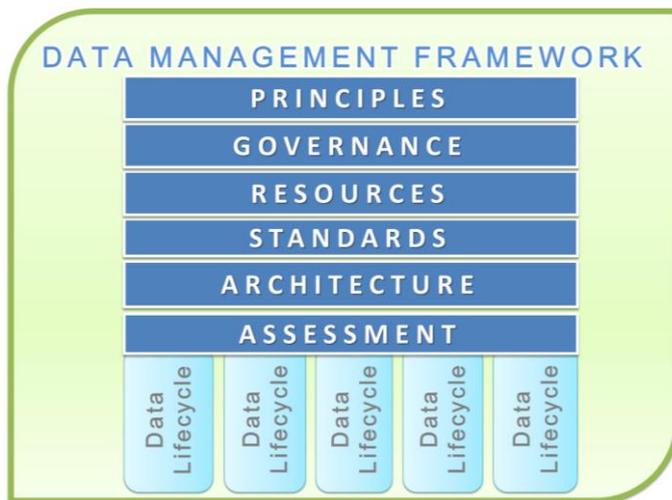


Figure 2 – Climate Data Management Framework (adapted from the NOAA Environmental Data Management Framework; EDMC 2013)

In building this protocol, the NOAA *Environmental Data Management Framework* (EDMC 2013) is used as a reference framework. Its generic functional structure as well as core concepts and recommendations for best practice data management formed an adequate basis to which specific considerations (including suggestions for a governance structure and a legal framework) were added, aiming to meet the specific needs of the regional context.

The Framework covers Principles, Governance, Resources, Standards, Architecture, and Assessment that apply broadly to many classes of data; and individual Data Lifecycles for particular data collections (Figure 2).

The Data Lifecycle describes the complete process of interrelated activities performed on a dataset during its lifetime (Figure 3). It can be separated into:

- 1) planning and production of data (by an observing system or data collection project),
- 2) data management (processing, verifying, documenting, advertising, distributing and preserving the data), and
- 3) data usage activities (performed by the consumer of the data).

(Figure 4) illustrates how the activities of different initiatives can align with different parts of the lifecycle.

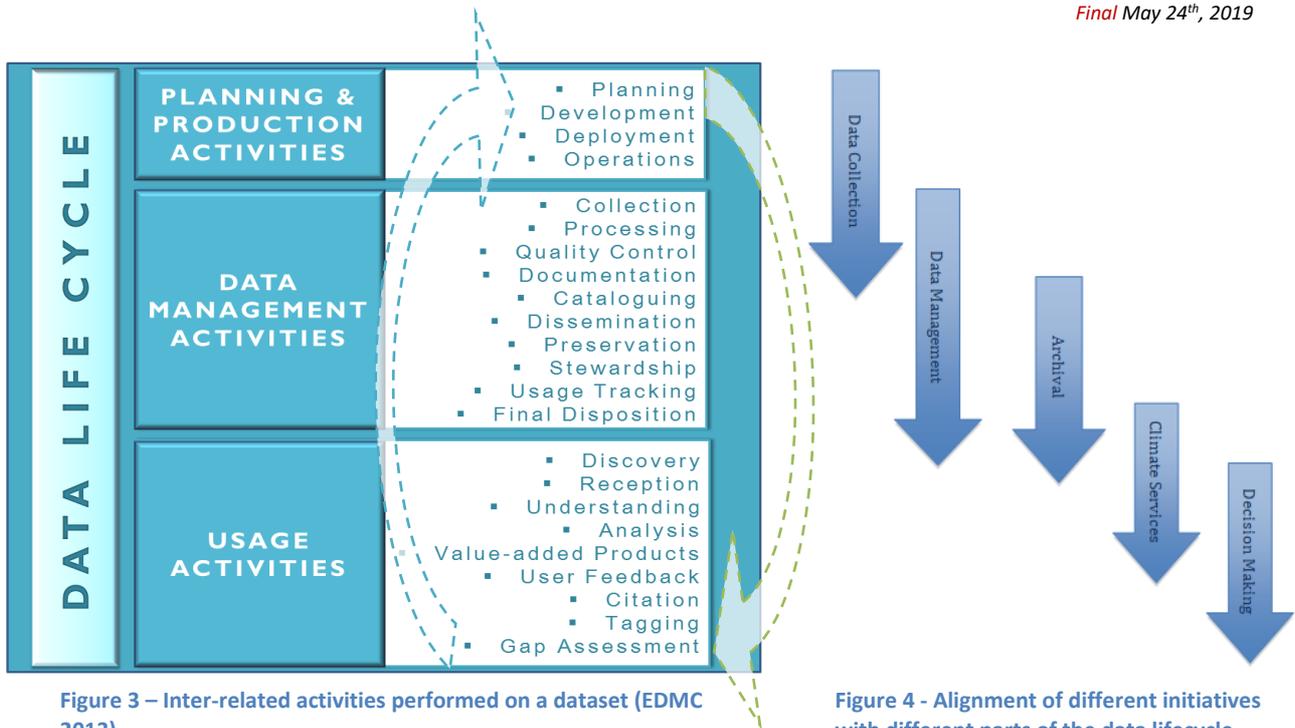


Figure 3 – Inter-related activities performed on a dataset (EDMC 2013)

Figure 4 - Alignment of different initiatives with different parts of the data lifecycle

2.1. PRINCIPLES

The following basic principles of the EDM framework (EDMC 2013) also apply to all data under this protocol:

- i. **Gradual improvement:** Bring existing high-value datasets and systems into compliance over time, prioritizing key datasets
- ii. **Full and Open Access:** Data should be made fully and openly available to all users promptly, in a non-discriminatory manner, and free of charge (or at minimum cost)
- iii. **Information Quality:** Data should be well documented and of known quality
- iv. **Long-Term Preservation:** Data should be managed as an asset and preserved for future use
- v. **Ease of Use:** Observations should be transformed into relevant products for end users that are made discoverable and accessible (where possible online), using interoperable services and standardized formats to encourage the broadest possible use.

As an additional principle and best practice, data should be packaged into documented and licensed data products, considering licensing options for open-access (creative commons), educational-use-only, or commercial. **There should be a data management plan for all major data products.**

2.2. GOVERNANCE

2.2.1. NATIONAL, INTER-AGENCY AND REGIONAL ORGANISATIONS

This protocol can be used and is recommended to any entity that is managing climate data, particularly for national, inter-agency and regional organisations with policy or technical authority over climate data management.

2.2.2. DEDICATED PLATFORMS

The protocol can also be implemented by federated entities that form dedicated platforms for a particular type and scope of data in a more coordinated and accountable way. Agreeing to become Designated Entities that implement the protocol, bound by a common mission of continuous enhancement of data availability and accessibility, and a governance structure as suggested in Figure 5 - Governance Structure - with mandatory agreements and assessments, and supported through a support mechanism.

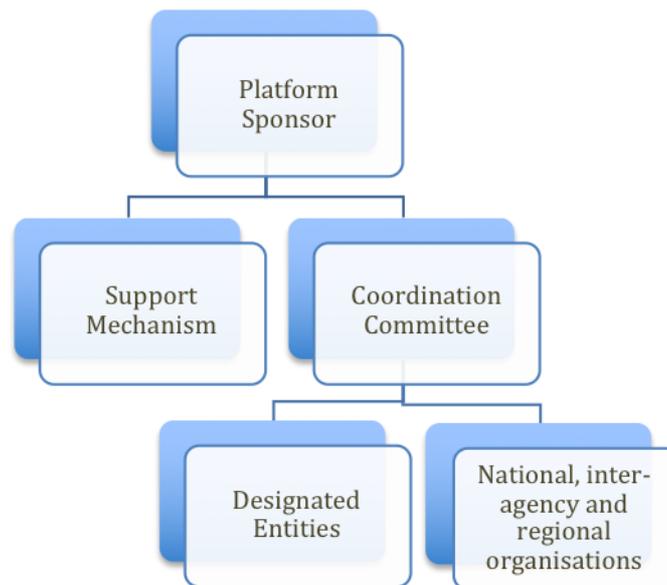


Figure 5 - Governance Structure of the data management protocol

2.2.3. DESIGNATED ENTITIES

The protocol is mandatory for all organisational entities that have agreed to become a Designated Entity that implements the protocol for a particular type and scope of data:

- i. Individual data platforms that implement the protocol for a particular and clearly defined type and scope of data,
- ii. national data collection and production centres that will provide access services and ***national level*** data discovery services,
- iii. regional data collection and production centres that will provide access services and ***regional*** data discovery services,
- iv. national and regional sector-specific **data collection and processing centres** that will provide value-added and climate services by combining climate data with relevant sector information to create actionable recommendations for decision making (e.g. adaptation planning),
- v. national and regional data centres / archives.

Designated Entity status is bound to meeting the requirements of this protocol. Designated Entities have to meet demand for contributions and compliance, continuous improvement of their service performance, and an increasing set of relevant available and accessible data, but in return receive support and resources through the protocol.

2.2.4. COORDINATION COMMITTEE

A platform must have a ***Coordination Committee*** that consists of technical experts for the particular type and scope of data the platform is intended to manage. The participating Designated Entities should be evenly represented in the Coordination Committee.

The Committee regularly decides on:

- (i) Accepting applications of any interested organisations to join the platform as designated entities under the protocol. Acceptance must be based on the expressed ability of the applicant to continuously meet the requirements of the protocol for the particular data it is applying to become a designated entity for. Applications must include an initial assessment (see Section 5. *Assessments*).
- (ii) Inviting suitable additional organisations with a potential to cover data gaps.
- (iii) Compliance of existing Designated Entities with the requirements of the protocol - based on regular assessments (see Section 5. *Assessments*) that include service performance indicators and data management plans.
- (iv) Giving sound recommendations to non-compliant entities regarding the necessary improvements.

Designated Entities that have lost compliance with the protocol must restore compliance within a defined timeframe to avoid losing their designated entity status.

2.2.5. PLATFORM SPONSOR

The **Platform Sponsor** is a group or organisation that intends to create a platform that implements the protocol to enhance the management of a particular type and scope of data across several designated entities.

A Platform Sponsor must:

- i. Clearly define the particular type and overall scope of data which the platform is aimed to improve.
- ii. Appoint a platform operator for this data that will:
 - a) Ensure there is a capable committee that will meet at its regular intervals.
 - b) Ensure that all members of the committee have the required technical expertise and are actively taking part in the required work of the committee.
 - c) Ensure that the committee regularly seeks and invites suitable additional Designated Entities with a potential to cover data gaps.
 - d) Remind existing designated entities to timely submit their regular assessments in time for the committee's decision.
 - e) Ensure that applications and assessments meet a certain quality standard as described in the Section 5. *Assessments* prior to the committee's decision.
- iii. Establish a support mechanism.
- iv. Verify at regular intervals if the Platform Operator, the Coordination Committee, and the Designated Entities have been continuously enhancing the availability and accessibility of the data to a satisfying degree - based on the performance indicators in the regular assessments – and take action accordingly.

2.2.6. SUPPORT MECHANISM

The support mechanism should support the Designated Entities such that they can improve and enhance the key performance indicators of the services they offer (access, data discovery or value-added / climate services as described below). The **support provided must focus on enhancing an entity's existing strengths and on opening up key bottlenecks in its provision of the services** and the implementation of relevant data management plans under the protocol. This could include

coordination of suitable co-operations, more sustainable cost recovery, and providing access to additional resources under the scrutiny of sound technical and financial audits. Clear contracts should be established between the support mechanism, the platform, and the Designated Entities to clarify the nature of the support and the conditions under which it is provided, for example, the necessity for regular assessments in accordance with this protocol.

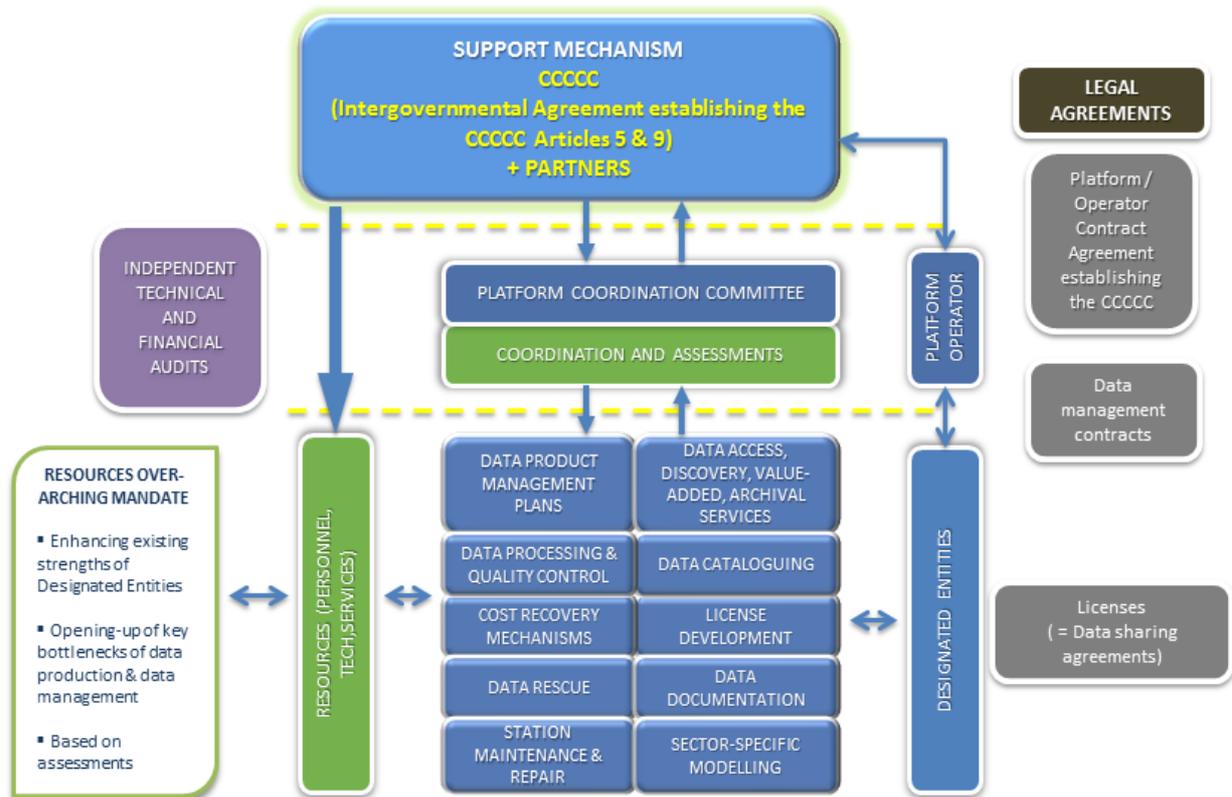


Figure 6 - Proposed mechanism support structure for data platforms

2.2.7. EXTERNAL COORDINATION

External considerations and influences have to be made for the protocol. Standards and protocols, for example, are in place in other regions of the world that should be assessed to make sure any Caribbean protocol system should be compatible and up-to-date in approaches and technology.

“In order to maximize compatibility of observations with other data it is important that there be awareness of and coordination with external bodies regarding standards and technical approaches.” (EDMC 2013)

This is also an opportunity as significant international support is tied to such awareness, coordination and compatibility.

Relevant external bodies include, among others:

- i. World Meteorological Organization (WMO)
- ii. Global Climate Observing System (GCOS)
- iii. World Climate Research Programme (WCRP)

- iv. The Global Sea Level Observing System (GLOSS)
- v. Intergovernmental Oceanographic Commission (IOC)
- vi. International Hydrological Programme (IHP)
- vii. International Association of Hydrological Sciences (IAHS)
- viii. Open Geospatial Consortium (OGC)
- ix. Committee on Earth Observing Satellites (CEOS)
- x. United Nations Framework Convention on Climate Change (UNFCCC)
- xi. Intergovernmental Panel on Climate Change (IPCC).

2.2.8. MONITORING AND ENFORCEMENT

Formal authority and responsibility to enforce this data management protocol resides with national and regional leadership and their designees.

Staff of hydrometeorological and climate services and national representatives such as climate change focal points should ensure their leadership is aware of and understands this protocol for data management.

Designated Entities are expected to report the status of their data management services to the Coordination Committee through self-assessments on a regular basis as described in Section 5. *Assessments* below. They are expected to gradually, but continuously, improve the quality of their (e.g. access) services and data products, measured using the performance indicators stated below.

3. RESOURCES

Organisations should align existing resources and planned projects such that they enhance the continuous operations of the organisation with a focus on improved management of the data to which the protocol applies.

“Data cannot be adequately managed without proper resources, including personnel, budget and other supporting elements. Lack of resources is often a factor leading to data that are poorly documented, inaccessible, or improperly preserved.” (EDMC 2013)

3.1. PERSONNEL

Good data management must become a part of core business practices and explicitly covered in the organisational structure.

“Competent and motivated personnel are the key to proper management of climate data. [...] Too often, activities such as creating and maintaining metadata, making data available to other users, or ensuring data are properly transmitted to an archival facility are treated as tasks that are ancillary to an employee's regular duties.” (EDMC 2013)

Personnel considerations include:

- (i) **Clear roles and responsibilities:** Employees responsible for any aspect of data management should have that role and responsibility clearly stated in their job descriptions, with the authority and means to carry out that role.
- (ii) **Capacity-building and knowledge retention:**
Roles for training and knowledge retention are crucial for sustainability of the platforms.

“Personnel should be informed of the need for good data management principles. Relevant staff should be offered training in data management practices. Data-related knowledge of departing staff should be captured as part of exit procedures.” (EDMC 2013)

- (iii) **Enabling and encouraging existing technical capacity:** Technical personnel with expertise in the particular type of data being managed, and the motivation to do so, should be enabled and encouraged to take part in data management activities and in the governance of the protocol, for example, the Coordination Committee and assessments.
- (iv) **Collaboration:** Personnel are more effective when they can exchange knowledge and work together (EDMC 2013), and collaborate with experts from other organisations.

3.2. FINANCIAL PLANNING AND BUDGET

Recurring costs are associated with setting up and maintaining a data platform and protocol. Costs for maintaining data management operations can include continuous personnel fees, equipment, software licences and primary/secondary data capture.

“Data managing organisations and projects are required to consider how they will continuously manage their data.” (EDMC 2013)

This requires active and continuous funding of data management operations.

i. Collaboration:

Internal and external collaboration is essential.

“Heads of organisations, department and program managers, project leaders, and technical personnel should work together to adequately plan and budget for data management.” (EDMC 2013)

- ii. **Cost recovery:** Organisations should identify means of cost recovery for the data products managed under the protocol, and where possible also move from temporary project funding to core funding for all required regular data collection and management operations.
- iii. **Financial planning of operations:** For all data products managed under the protocol, designated entities must have in place:
 - a) A data management plan that includes personnel and financial planning to cover the required data management activities during the lifecycle of the data products.
 - b) Sound financial management, as well as cost recovery mechanisms for day-to-day data management operations.
- iv. **Platform support:** Platforms implementing the protocol should provide the best possible technical support and additional resources to its designated entities through the support mechanism.

3.3. LEGAL FRAMEWORK

3.3.1. KEY COMPONENTS OF DATA MANAGEMENT/USE AGREEMENTS

The legal considerations of data management are mainly related to the identification of the ownership of the data and the terms and conditions related to their use. Data ownership often is determined by the arrangements specified in contracts associated with the acquisition or compilation of data. These contracts are often in the form of data management agreements, data use agreements, and terms appearing in project contracts addressing intellectual property or ownership of tangible and intangible knowledge assets derived from the project. In the absence of a contract, one can look to the data management or IP policies of the parties involved in a dispute of data ownership. Ultimately, however, the jurisdiction / applicable law identified in the contract will be used as the benchmark determining data ownership.

3.3.2. WHAT IS DATA OWNERSHIP?

As pointed out in (ODP 2005), data ownership provides the legal framework which identifies how the associated rights in data can be exploited. Ownership is claimed in the data item, data sets or a value-added data set. Knowing who owns the data rights can greatly facilitate the payment of royalties to the owner. It is important that before data is collected, used or shared, it is important that data owners provide a framework, through some form of agreement, which addresses how third parties can have access to, and use of, their data.

3.3.3. COMPONENTS OF THE AGREEMENT

The following section will examine the key components of data management and data use agreements.

These agreements generally contain terms which preserve the owner's rights to its data while also preserving third party IPRs associated with storage, analysis and use of the data (CGE 2018). The agreement seeks to address the competing interests of each party. The conundrum associated with this balancing act is shown in the following scenario (CGE 2018):

A vendor is contracted to process and generate data from data received from the customer/client. In this scenario the customer is interested in:

- i. Maintaining data confidentiality;
- ii. Prohibiting the use of the data other than for its benefit;
- iii. Obtaining ownership of any new data generated as a result of the vendor processing its data.

The vendor however is interested in:

- i. Analysing and using the customer’s data to provide services to the customer as per their contract.
- ii. Processing and aggregating the data owned by the customer for commercial exploitation by creating new products and services which it can use internally and offer to third parties.

The data management agreement must be crafted in such a way to balance these different objectives of the parties while allowing data knowledge to be transferred and used beneficially.

3.3.4. DISSECTING KEY COMPONENTS OF A DATA LICENSING AGREEMENT

The data license covers several issues of concern including data ownership and use and how original, derived and usage data are treated. The license will also address the way in which the data will be delivered, maintained, controlled and issues of data security.

3.3.5. ADDRESSING DATA OWNERSHIP IN LICENSES

Both the customer (licensor) and the vendor (licensee) will have data associated with the contractual arrangement which they will want addressed accurately in the license agreement. The following scenario will highlight how these concerns can be addressed legally.

The customer/licensor owns the data: In this case the licensor will seek to have the licensee agree that data provided under the agreement is the licensor’s sole property and its exclusive rights will be elaborated in the agreement.

Here are some considerations when drafting contracts related to this scenario:

“....Significant time and resources have been expended by the licensor to gather, assemble and compile the data provided and that the data is the licensor’s valuable property. The licensor reserves the right to obtain additional fees from the use of additional data or for additional usage not specified in the initial contract and which contains trade secrets of the licensor.”

It is important that there is a clear understanding and agreement as to what the data is that is the subject of the agreement. The following terms have been extracted from documents which seek to

address data ownership and usage terms in US government contracts and provide an example of how ownership is addressed (CGE 2018):

“Government owns the data. The vendor therefore hereby assigns without any requirement of further consideration all rights, title or interest the vendor may have to Government data including copyright or IPRs to the same. The vendor hereby warrants that the licensed product does not maintain, store, or export government data using a data structure, data model, entity relation diagram or equivalent which is itself a trade secret or which would cause substantial injury to the competitive position of the Agency if published. Subject to the provisions of [.....], the Agency hereby grants the vendor a non-exclusive, non-transferable, worldwide:

- 1. know-how license to internally use the Government Data for the sole purpose of enabling Vendor to develop, test, and support Agency’s use of the Licensed Product;*
- 2. copyright license to internally reproduce, internally display, and internally distribute the Government Data; and*
- 3. Copyright licenses to reproduce, display, distribute, and create derivative works of the Government Data upon the request of the Agency. “*

This language is requiring that the vendor waive all IP claims, such as copyright, to the data in any database provided by the client. Additionally, it requires the vendor to agree that the database is not a trade secret. This term allows the vendor to use the data to provide the services it was contracted to undertake. It essentially prevents the vendor from making claims to copyright and other IPRs to data stored and or maintained by the vendor on behalf of the customer.

The data management agreement may also provide that all derivative works of, based on, derived from or otherwise using any customer data are themselves considered to be owned by the customer. This provision essentially can cover all output, copies, reproductions, improvements, modifications adaptations and translations - all of which are covered under copyright law and provided as inherent rights of the data owner.

The agreement may also have provisions which address designation or allocation of ownership of usage data which will reflect any provisions related to access to or use of, the services by or on behalf of the customer.

There will also be provision made with respect to the vendor making a guarantee of disencumbrance. This provision basically provides that the data provided by the vendor under the contract does not belong to someone else and that the vendor owns the IP rights; that the IPRs are in the public domain or that the vendor has a license to use the data for the purpose specified under the agreement. To capture this provision in a data management agreement, the following sample language can be used:

“Vendor warrants that any data provided under the terms of this agreement is in the public domain or otherwise unencumbered by intellectual property restrictions on its use by Vendor warrants that use of the Licensed Product to create, maintain, and modify the Government Data under the terms of this agreement shall not be restricted by Vendor’s copyright, patent, or intellectual property considerations. “ (CGE 2018)

To further guarantee the freedom to use the data as required under the agreement, the vendor not only must confirm ownership or the right to use the related IP, they must also provide assurances they have the legal authority to license those rights and confirm that there are no lawsuits filed in relation to the IP. The following language may be used:

“Vendor represents and warrants that it has the full right and power to assign its rights, titles, and interests in [the data which is the subject of the agreement] and otherwise perform its obligations hereunder, and that there are no outstanding Agreements, assignments, or encumbrances inconsistent with the provisions of said licenses or with any other provisions of this Agreement. Vendor represents and warrants that it is not aware of any claims of infringement of intellectual property that have been brought against it by third parties for infringement of such third party’s intellectual property by the Licensed Materials.”(CGE 2018)

The agreement will also have an indemnity clause which provides that if the customer/client is sued for infringing the IPRs of someone else by using the vendor’s products or services, the vendor will be liable for paying attorney’s fees as well as the damages if the lawsuit is lost.

As it relates to the vendor, there is the understanding that they will also have IPRs which may be used while executing their contract obligations. In such cases the vendor is expected to keep its IP interests in its own data which does not incorporate any data from the customer.

Other typical provisions in contract will also apply such as applicable law, dispute resolution, *et cetera*, to better understand how these provisions appear in an agreement. Sample data management license agreements are provided in *Annex 1 -Bibliography*.

3.3.6. RECOMMENDATIONS FOR INNOVATIVE WAYS FOR MANAGING IP ASSETS RELATED TO DATA MANAGEMENT

This data management protocol is based on four basic principles:

- i. Full and open access.
- ii. Licensing of data products with consideration regarding open access, education and commercial options.
- iii. Long-term preservation with data being managed as an asset.
- iv. Ease of use regarding data discoverability, usability and interoperability of systems.

These principles are proposed within the context of how hydrometeorological and other spatial data are collected and used within the region as well as the capacity of national and regional agencies to collect, store and reuse the data for decision making at all levels. The freedom to operate with regard to these objectives will depend on the IP systems in place to manage these types of data.

3.3.7. AN OPEN ACCESS FRAMEWORK

Open access generally refers to putting published research results immediately in the public domain by **freely making these results available** to anyone with an internet connection rather than keeping those results inaccessible by having users pay or by making it difficult to access. A similar open access mechanism can apply to hydrometeorological and spatial data generated at national, regional and international data centres that wish to make their data available and easily accessible, especially to aid developing countries achieve their reporting obligations under various multilateral environmental agreements.

Open access to data is often addressed under an open data mechanism which seeks to ensure that data are freely available for reuse with no constraints apart from a requirement to acknowledge the data source and ensure that the data are made available under a share-alike agreement. In some jurisdictions, Open data legislation aims to make non-confidential government data available for public use in a format that is easily accessible. Such formats allow government information to be used in innovative ways by citizens, businesses and other organizations.

In terms of licences, the most frequently used are **Creative Commons** or **Science Commons** licenses, while some institutions have their own Open access and Open data agreements. The subjects of these agreements are information products (research results and data) which can include:

*“.....peer-reviewed journal articles; reports and other papers; books and book chapters; data and databases; data collection and analysis tools (e.g. models and survey tools); video, audio and images; computer software; web services (e.g. data portals, modelling on-line platforms); and metadata associated with the information products above.”
(CGIAR 2013)*

Openness with regard to information products refers to using best efforts to:

...“make all information products Open Access, subject always to the legal rights and legitimate interests of stakeholders and third parties, including intellectual property rights, confidentiality, sensitivity (including price and politically sensitive information), farmers’ rights and privacy”.

Creative Commons Open access licences which can be used by national and regional data centres that have a mandate to make their hydrometeorological and spatial data available to the public; or international data centres with a directive to facilitate access to their data by developing countries. Creative Commons has six basic types of licences which can be adapted for use for the purpose of the protocol being recommended as follows (CGIAR 2013):

I. Attribution CC BY

This license allows for licensees to distribute, remix, tweak, and build upon your work, even commercially, as long as you are credited for the original creation. This is the most accommodating of licenses offered and is recommended for maximum dissemination and use of licensed materials.

II. Attribution ShareAlike CC BY

This license lets others remix, tweak, and build upon your work even for commercial purposes, as long as they credit you and license their new creations under the identical terms. All new works based on yours will carry the same license, so any derivatives will also allow commercial use.

III. Attribution-NoDerivs CC BY-N

This license lets others reuse the work for any purpose, including commercially; however, it cannot be shared with others in adapted form, and credit must be provided to you.

IV. Attribution-NonCommercial CC BY-NC

This license lets others remix, tweak, and build upon your work non-commercially, and although their new works must also acknowledge you and be non-commercial, they don't have to license their derivative works on the same terms.

V. Attribution-NonCommercial-ShareAlike CC BY-NC-SA

This license lets others remix, tweak, and build upon your work non-commercially, as long as they credit you and license their new creations under the identical terms.

VI. Attribution-NonCommercial-NoDerivs CC BY-NC-ND

This license is the most restrictive of the six main licenses, only allowing others to download your works and share them with others as long as they credit you, but they can't change them in any way or use them commercially.

Samples of each of these licenses are provided in *8.2 Sample Agreements and Licences*.

3.3.8. PACKAGING DATA PRODUCTS

A key consideration is how the data generated will be used by end-users as this will determine the terms and conditions of the licence and the IP provisions. The following options can be explored.

- (i) **Open Access:** as provided above there are several options but for the purpose of the region the option providing full access to data for the purpose of reporting under various MEAs as well as for decision making would be most suitable.
- (ii) **Education and Teaching:** Data sharing agreements provided on the platform should make provision for use of the data for the purpose of education and teaching. This would be consistent with 'fair use' provisions within copyright legislation of participating member countries.
- (iii) **Commercial Use:** the data-use component of the agreement must clearly provide the conditions for use of the data provided for commercial purposes. Typically, the licence for commercial use will require the parties negotiate the terms and conditions related to upfront and royalty payments with regard to use. These terms then become part of the

agreement. All parties participating on the proposed platform will need to agree on the conditions for which the data can be used commercially. As one of the challenges identified during the project was that participating countries did not engage in the development of data products or services related to the data they collect and use, an option for commercial use where the data owners are compensated, can serve to facilitate innovative mining of the data to develop new products and services.

3.3.9. MANAGING DATA AS AN ASSET

Data collected, shared and used on the platform **must be viewed as an asset** and managed as such. This will require that there are guidelines developed which address how parties can best audit and categorise their data and develop a management strategy based on how they envision the data will be used internally and by others. It is therefore recommended that each agency undertake capacity-building training on the management of intellectual property assets, specifically data and its use on shared platforms and commercialisation of these assets.

3.4. OTHER RESOURCES

Other types of resources important for data management protocol are:

- (i) **Collaboration:** Teams, cross-organisational groups and university and research collaborations for mutual support and guidance should be supported
- (ii) **Knowledge Exchange:** Conferences, Workshops and meetings are tools to exchange and enhance knowledge about data and data management
- (iii) **Documentation:** Recommended practices and other guidance should be kept in a publicly readable place, with the possibility to contribute.
- (iv) **Software:** Appropriate software can support the data management process.

“Platforms and open-source and commercial software packages exist for editing metadata or providing user-facing (public) services for data discovery, access, or visualization.”(EDMC 2013)

4. STANDARDS

Different types of standards are applicable in various phases of the Data Lifecycle. These include common vocabularies, standards for data quality, metadata standards that specify the content and structure of documentation about a dataset, data models and format standards that specify the content and structure of the digital data itself, and interface standards that specify how services are invoked.’ (EDMC 2013)

To support and simplify information exchange among organisations and between organisations and external data providers, common standards should be adopted to support interoperability.

“The broad use of a small set of common data, metadata, and protocol standards across agencies especially using international standards where possible, will decrease the cost of making and using [...] observations, enhance the utility of the data, and help avoid redundant technical development.”(EDMC 2013)

4.1. ARCHITECTURE

This section explains the architecture of the framework underlying the protocol, outlining considerations regarding infrastructure, the shared services provided by participating organisations, and their federation.

4.1.1. INFRASTRUCTURE

Modern data collection and analysis relies heavily on data infrastructure for observation, collection, processing, analysis and storage of the data. Such infrastructure exists in various types and scales, from a single personal computer to a network of computing and storage clusters, from a single thermometer to a network of automated weather stations and data buoys, research centres and universities, agencies and decision bodies, as well as the connecting communication links.

*“ [...] infrastructure involved in data management includes the observing platforms and systems themselves, data collection and processing systems, archival data centres [...], dedicated data links such as the WMO Global Telecommunication System (GTS), [...] general-purpose network infrastructure [...] and other computing resources.”
(EDMC 2013)*

Operators that have acquired infrastructure must take care of its maintenance, repair and updates such that the infrastructure remains available and functional with a high availability, and can meet its purpose. It is therefore important to ensure that budgets for operation, maintenance and repairs align with the size of the operated infrastructure.

“These infrastructure components are expensive to acquire and maintain. Costs can be reduced over the long term by avoiding project-specific systems built from scratch. Instead, gradual adoption of commodity hardware and software, and the establishment of common [...] systems that provide functionality for multiple projects or [organisations] [...], are preferable.”(EDMC 2013)

It is also recommended to plan forward and to timely consider future infrastructure needs.

Besides purely technical infrastructures such as IT and observation systems and networks, research infrastructures are also noteworthy. Examples of key indicators for research infrastructures are the numbers of researchers that have access, and the number of (peer-reviewed) publications (see, for example, CERIC 2018).

It is recommended that platforms and Designated Entities collaborate on defining key performance indicators for the infrastructures required in their data management plans, and to monitor these indicators regularly as part of designated entities’ assessments.

4.1.2. SHARED-SERVICES

Following the reference framework (EDMC 2013), this protocol is based on shared-service architecture as illustrated in Figure 7. Services are loosely coupled, rather than vertically-integrated ‘stovepipes’ that only provide services for specific users and customer.

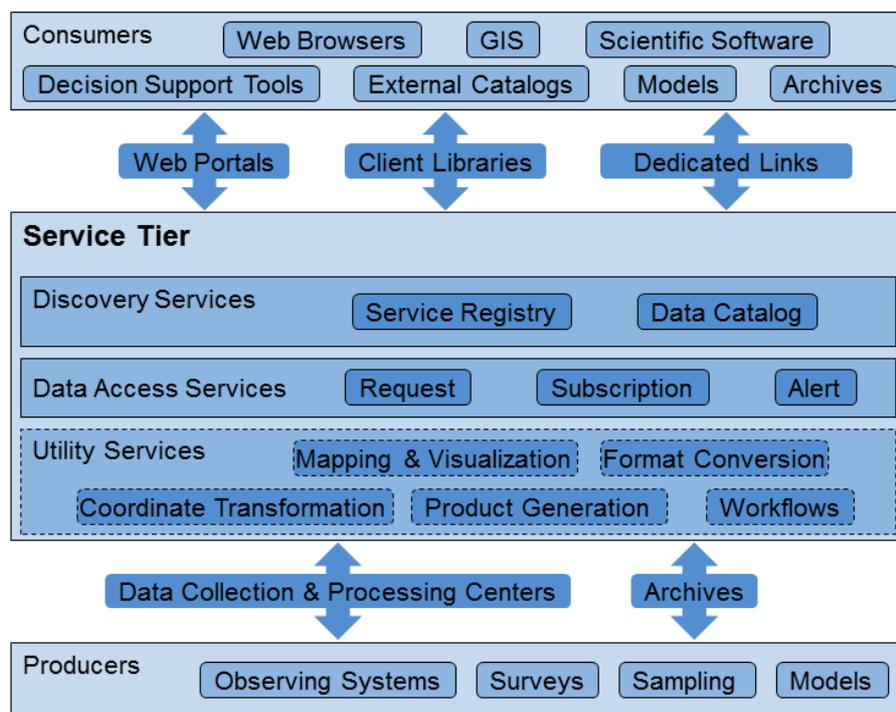


Figure 7 - Shared-service architecture (EDMC 2013)

4.1.2.1. Data Access Services

Data and metadata should be delivered through (manual or automated) access services provided at the source of the data to make it available to users both inside and outside of a participating organisation.

A data access service must provide:

- i. A table of contents of available data products
- ii. Data documentation for data products served
- iii. Available Licensing / Data Sharing Agreements

Modes of access provided can be:

- i. Access on request
- ii. Access by subscription
- iii. Access in response to an alert

“Access services can offer functions such as ,searching for data, retrieving a copy or a subset of data, visualizing data (e.g., producing a coloured map or a time-series graph), or otherwise transforming data (e.g., converting to other formats or other coordinate systems).”(EDMC 2013)

Access services should be delivered through a **publicly advertised and well-accessible contact point** that provides the service (preferably online, with address, phone number and email), and where possible through a web-based user interface.

“Data access services should provide security (limiting direct interaction with the back-end system), convenience (providing a table of contents and allowing customized subsets to be requested), and standardization (making access methods and formats compatible even if the internal storage differs).”(EDMC 2013)

It is recommended that they also offer standardized software-based interfaces that can be invoked by software applications.

Key performance indicators of access services are:

- i. scope of data products,
- ii. number of data products added to table of contents,
- iii. percentage of data products that have complete data documentation,
- iv. number of requests, subscriptions, alerts,
- v. number of requests successfully served.

4.1.2.2. *Discovery Services*

A *data discovery service* must provide, and continuously update, publicly accessible catalogues of access services and available data.

“Catalogues should be built from these data access services to enable users to search for data and find available sources and data products.”(EDMC 2013)

Key performance indicators of data discovery services are:

- i. Number of data products added to the catalogue;
- ii. Number of available sources added to the catalogue;
- iii. Number of search requests served.

4.1.2.3. *Value-added Services*

Value-added services transform datasets, or combine them with other datasets, in order to achieve an added value, such as analysis and modelling.

Climate services for example are value-added services that enable better management of risks of climate variability and change, and of adaptation to climate change, through the development and incorporation of climate information and prediction into planning, policy and practice. To achieve this, they combine climate data with models and datasets from other sectors, such as agriculture, disaster risk reduction, water, transport, health and energy.

“Value-added services, such as climate services, provide analysis and modelling, combination with other (e.g. sector specific) datasets, visualization or other transformations. They ,can be operated either by the original data holders or by third parties.”(EDMC 2013)

Value-added and *climate services* must provide **access services** to the data they have analysed and transformed, or the recommendations derived for decision-making.

“Thematic portals can be constructed to present a unified access point to related datasets from multiple sources.”(EDMC 2013)

Key performance indicators of climate services are:

- i. all indicators of the access service,
- ii. number and type of actionable recommendations for decision-making derived from the data.

4.1.3. FEDERATED APPROACH

Data collection and archival, as well as production elements of data management, together with operational access and discovery services, allow for an integration of disparate data management initiatives into a region-wide data management system (respectively platform) over the long term.

“A federated systems approach, as illustrated in Figure 8, is [...] necessary to leverage and harmonize multiple legacy, modern, and future systems that have evolved separately and are managed independently. A federated system is a collection of [...] information systems that are independently managed and loosely coupled in a way that provides the behaviour of a single system, while enabling each organization to remain the steward of its own information.” (EDMC 2013)

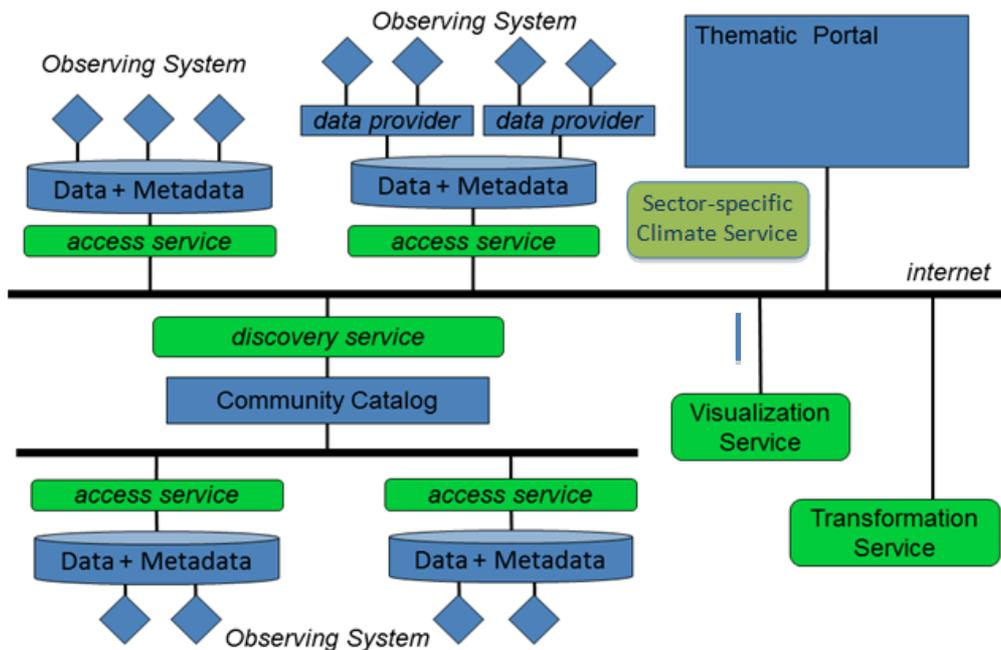


Figure 8 - Federated systems approach (based on EDMC 2013)

Designated organisational entities that implement these elements and services must meet the requirements for data producers and archives, as detailed in the following sections.

4.1.3.1. Data Producers / Data Collection and Processing Centres

A **data collection and processing centre** must continuously add and update data products that can be accessed through their access services.

- i. Must provide access services and lists of available data sets / products;

- ii. Must provide accompanying data documentation and licensing information;
- iii. Should collaborate with the international scientific community regarding the quality of the data;
- iv. Should distribute documented data products with an appropriate license to dedicated national, regional and international archives;
- v. Should contribute data to international data distribution networks (such as WMO GTS/WIS/GCOS/PSMSL);
- vi. Should provide data *discovery services* / catalogues that help users find data products available from its own access services and from other data producers.

4.1.3.2. Archives

An archive must continuously add fresh data and provide storage space to data producers.

- i. Must provide archival and access services to data producers;
- ii. Should provide data discovery services / catalogues that help users find data products available from the various data producers;
- iii. Could also provide access services to third parties in accordance with data producers' licensing.

Additional key performance indicators for archival services are:

- i. number of data producers served from the archives,
- ii. storage space provided to data producers.

5. ASSESSMENTS

Assessments of organisations that use the protocol should take into account:

- i. The specific type (e.g. variables, observations, models) and scope (e.g. time/spatial coverage) of data being managed under the protocol;
- ii. The services provided (data access services, data discovery services, archival services and/or value-added services);
- iii. The key performance indicators for these services;
- iv. Strengths and key bottlenecks in the provision of these services;
- v. The alignment of resources for providing the services;
- vi. The data management plans for the lifecycle of the data products provided;
- vii. Financial planning and cost recovery mechanisms for services and day-to-day data management activities.

Designated entities must report their assessments to the coordination committee through a standardized structure that covers:

- i. Definition (specific type, variables, models etc.) of climate data managed under the protocol;
- ii. Scope (e.g. spatial coverage / time range) of this data;
- iii. Services provided (data access, data discovery and/or value-added services);
- iv. Key performance indicators for these services in the reporting period (see above for indicators);
- v. Data management plans (see section 'Planning and Production' above).

6. THE DATA LIFE-CYCLE

This section introduces the data lifecycle management process, defines activities of data management during the lifecycle, and gives recommendations for their implementation.

This is particularly useful for planning data management, for assessing opportunities for improvement, and in conducting the actual operations.

Descriptions of the activities mostly follow the EDM framework (EDMC 2013), where they are excellently outlined:

“The data lifecycle includes all the activities that affect a dataset before and during its lifetime [...] A lifecycle data management process ensures that observing systems are based on requirements, that the resulting data are properly stewarded, and that data can be used both for their original purpose and in novel ways. It is a dynamic process rather than a linear sequence. [...] the steps in the life cycle are not independent, but rather depend on and influence actions taken at other steps. For example, inadequate documentation at an early stage can prevent later use; generation of products from original data may yield new derived data that must also be collected and managed; user feedback regarding data may change or augment the documentation about data. [...] effective management of each step, and coordination across steps in the life cycle, are required to ensure that data are reliably preserved and can be accessed and used efficiently.” (EDMC 2013)

Data-Life cycle is broken into three main activities:

- A. Planning and Production
- B. **Data Management Activities**, and
- C. Usage Activities.

These main activities are further detailed in the following sections. *The activity of focus*, however, will be on the **Data Management Activities**, as these are most pertinent to establishing the data management protocol. Data management is more of an operational issue for which the protocol needs to be developed. This is different from Planning (must occur before data management) and Usage (which relies on data management already being in place).

6.1. PLANNING AND PRODUCTION ACTIVITIES

Data management plans should be developed that cover the data products managed under the protocol.

“The first phase of the data lifecycle includes activities ‘up to and including the moment that an observation is captured by an observing system or data collection project.’” (EDMC 2013)

At the initial stage of data capture, planning and production are set into motion. The plans should be flexible and updated as needed.

“ They should include ‘assessing the need and requirements for an observing system, planning how to meet those requirements and how to manage the resulting data, developing any necessary sensors, deploying the observing system, and operating and maintaining the observing system.’” (EDMC 2013, italics added)

Planning and production are further classified into the following sub-activities, useful as a sequenced guide for executing this stage:

- 1) *Planning* - formulating how to meet demands of project objectives with existing resources,
- 2) *Development* – getting to a desired new state/stage,
- 3) *Deployment* – bringing an effective action into place,
- 4) *Operations* – activities for converting data into final desired output(s).

6.2. DATA MANAGEMENT ACTIVITIES

This section is most crucial for establishing the protocol. In this section, the different activities of the data management lifecycle are explained. This is detailed for operational data management activities and their support.

“The second phase of the data lifecycle includes ‘all activities related to processing, verifying, documenting, advertising, distributing and preserving data’” (EDMC 2013)

Data management activities further detailed in the following sections include:

- | | |
|---------------------|------------------------|
| 1) Collection, | 6) Dissemination, |
| 2) Processing, | 7) Preservation, |
| 3) Quality control, | 8) Stewardship, |
| 4) Documentation, | 9) Usage Tracking, |
| 5) Cataloguing, | 10) Final Disposition. |

6.2.1. DATA COLLECTION

The first major data management activity is data collection:

“Data Collection typically refers to the initial steps of receiving raw data from an environmental sensor or an observing campaign. Collection may include purchasing commercial datasets, negotiating arrangements for access to data from foreign systems, issuing contracts for data collection, and issuing research grants that may result in the creation of [...] data.” (EDMC 2013)

Data collection may also include collecting literature, conducting surveys or retrieving datasets from other organisations.

6.2.2. DATA PROCESSING

Once raw data is collected, it needs to be processed. In this stage, data is routinely organised and packaged into defined records and data products.

“Data Processing includes all the steps necessary to transform raw data into usable data records and to generate the suite of routine data products. Such processing is typically performed by specialized systems that have their own internal data management controls. Users do not normally have direct access to the processing system. However, the design of these systems can have a great impact on the cost and on the timeliness, preservation, and quality of the resulting data records and products. Processing systems should not be built from scratch for each observing system to leverage past investments or existing resources.” (EDMC 2013)

Organisations should enhance the use of data processing systems that are already established, or where necessary pool resources to sustainably establish adequate new ones.

6.2.3. QUALITY CONTROL

Once the records are created and organised, the data should undergo specialized quality control, to check for and flag errors and bad or suspect values. As a result, the quality of the data will be known to its users, thus allowing for appropriate and scientific use.

“Data should be of known quality, which means that data documentation includes the result of quality control (QC) processes. QC tests should be applied to data, including as appropriate automated QC in near-real-time, automated QC in delayed-mode, and human-assisted checks. Quality-assurance (QA) processes should be applied to provide validation that observations meet their intended requirements throughout the Data Lifecycle. [...] The results of these checks should be included in [documentation or] metadata as error estimates or flagging of bad or suspect values. Raw data that have not undergone QC should be clearly documented as being of unknown quality.”
(EDMC 2013)

Data producers should actively seek scientific collaboration on quality-assurance where possible.

6.2.4. DOCUMENTATION

To allow users to use the data appropriately and that any resulting analyses are credible, documentation is essential (EDMC 2013). Sufficient documentation also eases cataloguing, discovery and classification of the data.

“Data documentation provides information about the spatial and temporal extents, source, lineage, responsible parties, descriptive attributes, quality, accuracy, maturity, known limitations, and logical organization of the data. Formal, structured documentation is known as metadata. [...] Standardized metadata support interoperability with catalogues, archives, and data analysis tools to facilitate data discovery and use.” (EDMC 2013)

To ease data sharing, it should also include information on the data sharing agreement / license the data is shared under.

6.2.5. CATALOGUING

To enable an audience of users to discover the available data, it is inevitable to provide mechanisms of cataloguing it. Data providers should therefore provide easily accessible catalogues to their intended audience.

“Data ‘should be readily discoverable because modern research and decision-making depend critically on the ability to find relevant data from multiple agencies and disciplines.’” (EDMC 2013)

“Cataloguing methods include enabling commercial search engines to index data holdings, establishing formal standards-based catalogue services, and building web portals that are thematic, agency-specific, or government-wide. General web searching is often the first step for potential users, so this activity should be supported. However, advanced searching based on location, time, semantics or other data attributes requires formal catalogue services.” (EDMC 2013)

“To avoid redundancy, ‘Data providers should be able to register their service in a single catalogue.’” (EDMC 2013)

6.2.6. DISSEMINATION

Dissemination, actively transmitting and enabling users to access data on request (EDMC 2013) is an important activity to enable the sharing of data.

“Many users prefer direct access to online data via internet services. [...] data should be readily accessible to intended customers as well as other potential users. [...] Existing distribution channels should be shared where possible. [...] Data should be offered in formats that are known to work with a broad range of scientific or decision-support tools. Common vocabularies, semantics, and data models should be employed.” (EDMC 2013)

For high-volume data collections, dissemination through designated platforms and archives should be considered.

6.2.7. PRESERVATION AND STEWARDSHIP

This activity is particularly important to ensure that data are stored and protected from loss (EDMC 2013) for future use.

When there are changes or corrections, data needs to be updated and annotated. In the context of the transition from paper to electronic records, or between different electronic systems, this also refers to the importance of data rescue, data migration and archival activities.

“Stewardship ensures data continue to be accessible (for example, by migrating to new storage technologies) and are updated, annotated or replaced when there are changes or corrections.” (EDMC 2013)

6.2.7.1. Archival

It is recommended to identify or establish suitable national and regional archives, but also to collaborate with and submit data to relevant archives of the global scientific community.

“Data producers must establish a submission agreement with [...] [Designated] data [archival] centres [...], and must include archiving costs in their budget. To ensure data produced by grantees are archived, new [...] Funding Opportunities [...] should arrange and budget in advance [...] for archiving of data to be produced by the funded investigators.” (EDMC 2013)

Examples are:

- i. The Global Historical Climatology Network (GHCN)
- ii. The ICSU World Data Centre for Climate (WDCC)
- iii. Global Precipitation Climatology Centre (GPCC)
- iv. WMO World Data Centre for Greenhouse Gases

“The representation of data that needs to be preserved and stewarded for the long-term should be negotiated with the Data Centre and identified in the relevant data management plan. Key derived products, or the relevant versions of software necessary to regenerate products that are not archived, should also be preserved. [...] Some numerical model outputs should be preserved. These outputs are often voluminous or ephemeral, and what subset to archive should be carefully considered. Data that has been sent to a [...] Data Centre should also be discoverable and accessible as described in the preceding sections.” (EDMC 2013)

6.2.7.2. Data Rescue

A precondition to allow for better access to longer term historical observational data, as needed amongst others for the observation and modelling of changes in climate, is the digitisation of this data (data rescue). National meteorological services and national and international archives (e.g. national archives, British admiralty log files) possess a wealth of longer-term historical records on paper that still await digitisation.

“Data rescue refers to the preservation of data that are at risk of loss. Such data include information recorded on paper, film, or obsolete media, or lacking essential metadata, or stored only in the scientist's computer.” (EDMC 2013)

Action should be taken to register and rescue datasets at risk. There are a number of bodies who can provide assistance, for example:

- i. The International Data Rescue Initiative (I-DARE)
- ii. International Environmental Data Rescue Organization (IEDRO)
- iii. The Centres such as The U.S. National Climatic Data Centre’s (NCDC)
- iv. The International Council for Science (ICSU) Committee on Data for Science and Technology (CODATA) Data at Risk Task Group (DARTG).

6.2.8. USAGE TRACKING

Usage Tracking shows that the data is used and can be valuable information for proofing effectively of data services to funding organisations and other customers. It can also give a good indication of relevance and future demand for planning.

6.2.9. FINAL DISPOSITION

Data retention schedules should be known and expressed in the data management plan. Organisations should decide if and how they should take responsibility for keeping individual datasets in the long term, and consider transferring them to archives for long term preservation.

“Each data producer should [...] have a records retention schedule indicating when their data should be transferred to a Data Centre for long term preservation.”
(EDMC 2013)

“The ability to measure how often datasets are being used. Crude estimation can be made by counting data requests or data transmission volumes from Internet servers. [...] More sophisticated means of assessing usage while preserving the anonymity of users are desirable.” (EDMC 2013)

6.3. USAGE ACTIVITIES

The third phase of the data lifecycle is Usage. In this phase, data is being used and interpreted and value is added by the data users. This can happen in various ways, including analysing and interpreting the data, combining it with other datasets, using it in models, or otherwise adding value by putting it into context, creating derived datasets and information, and publishing the results.

“The ability to obtain and use data is certainly a by-product of a good lifecycle data management process, and information from or about users may influence or improve the data management process.” (EDMC 2013)

Usage Activities are further broken down into the following sequence:

- 1) Discovery,
- 2) Reception,
- 3) Understanding,
- 4) Analysis,
- 5) Value-added Products,
- 6) User Feedback,
- 7) Citation,
- 8) Tagging,
- 9) Gap Assessment.

When data is discovered and accessed by a user as part of a data collection activity, **a new data management cycle starts.**

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13. **You** means the individual or entity exercising the Licensed Rights under this Public License. **Your** has a corresponding meaning.

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 1. retain the following if it is supplied by the Licensor with the Licensed Material:
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3. The disclaimer of warranties and limitation of liability provided above shall be interpreted in a manner that, to the extent possible, most closely approximates an absolute disclaimer and waiver of all liability.

Section 6 – Term and Termination.

1. This Public License applies for the term of the Copyright and Similar Rights licensed here. However, if You fail to comply with this Public License, then Your rights under this Public License terminate automatically.
2. Where Your right to use the Licensed Material has terminated under Section 6(a), it reinstates:
 1. automatically as of the date the violation is cured, provided it is cured within 30 days of Your discovery of the violation; or
 2. upon express reinstatement by the Licensor.

For the avoidance of doubt, this Section 6(b) does not affect any right the Licensor may have to seek remedies for Your violations of this Public License.
3. For the avoidance of doubt, the Licensor may also offer the Licensed Material under separate terms or conditions or stop distributing the Licensed Material at any time; however, doing so will not terminate this Public License.
4. Sections 1, 5, 6, 7, and 8 survive termination of this Public License.

Section 7 – Other Terms and Conditions.

1. The Licensor shall not be bound by any additional or different terms or conditions communicated by You unless expressly agreed.
2. Any arrangements, understandings, or agreements regarding the Licensed Material not stated herein are separate from and independent of the terms and conditions of this Public License.

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1. For the avoidance of doubt, this Public License does not, and shall not be interpreted to, reduce, limit, restrict, or impose conditions on any use of the Licensed Material that could lawfully be made without permission under this Public License.
2. To the extent possible, if any provision of this Public License is deemed unenforceable, it shall be automatically reformed to the minimum extent necessary to make it enforceable. If the provision cannot be reformed, it shall be severed from this Public License without affecting the enforceability of the remaining terms and conditions.
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8.2.2. EDUCATION AND RESEARCH TEMPLATES

8.2.2.1. Data Sharing Agreement Sample

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Data Sharing Agreement

February 13, 2019

by ContractStandards

Data Sharing Agreement

This Data Sharing Agreement is made on [AGREEMENT DATE] (the "Effective Date") between [PARTY A NAME], [whose principal place of residence is at / a [CORPORATE JURISDICTION] corporation with its principal place of business at [PARTY A ADDRESS]] (the "[PARTY A ABBREVIATION]") and [PARTY B NAME], [whose principal place of residence is at / a [CORPORATE JURISDICTION] corporation with its principal place of business at [PARTY B ADDRESS]] (the "[PARTY B ABBREVIATION]").

The parties agree as follows (the capitalized terms used in this agreement, in addition to those above, being defined in section [DEFINITIONS]).

1. Purpose of Data Sharing. The parties are entering into this agreement, and [PARTY A] is granting [PARTY B] access to the Data (defined in section [DESCRIPTION OF DATA]), for the purpose of [INSERT SHORT DESCRIPTION OF PURPOSE OF THE DATA USE] (the "Purpose").

2. Description of Data. "Data" includes [SHORT DESCRIPTION OF THE DATA, SUBJECT MATTER OF DATA], further described in [ATTACHMENT], attached to this agreement.

3. License Grant to Use Data. [PARTY A] hereby grants to [PARTY B] a limited, non-exclusive, non-transferable, and revocable license to access, copy, and use the Data (the "Data").

4. Use of Data

4.1. Purpose. [PARTY B] will use or disclose the Data only in furtherance of the Project or as required by Law.

4.2. Standard of Care. [PARTY B] shall exercise at least the same degree of care as it uses with its own data and Confidential Information, but in no event less than reasonable care, to

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4.4. Personal Information. [PARTY B] will not attempt to identify any Person whose information is contained in any Data or attempt to contact those Persons.

4.5. Permitted Disclosure. [PARTY B] may disclose the Data

(a) only if and to the extent [PARTY A] consents in writing to the disclosure, and

(b) to [PARTY A]'s officers, directors, employees, or Affiliates, who

(i) need-to-know the Data in furtherance of the Project,

(ii) have been informed of the obligations of this agreement, and

(iii) agree to abide and be bound by the provisions this agreement.

4.6. Required Disclosure. If [PARTY B] is compelled by Law to disclose any Data it shall (a) provide [PARTY A] with prompt written notice so that [PARTY A] may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this agreement,

(b) cooperate with [PARTY A] to obtain a protective order or other appropriate remedy, and

(c) if the parties cannot obtain a protective order, other appropriate remedy, or otherwise fail to quash the legal process requiring disclosure, [PARTY B] will disclose the requested Data only to the extent necessary to satisfy the request.

4.7. Unauthorized Disclosure

(i) **Report.** Within [three] days of [PARTY B] becoming aware of any unauthorized use or disclosure of the Data, [PARTY B] shall promptly report that unauthorized use or disclosure to [PARTY A].

(ii) **Cooperation and Mitigation.** [PARTY B] shall cooperate with any remediation that [PARTY A], in its discretion, determines is necessary to

(1) address any applicable reporting requirements, and

(2) mitigate any effects of such unauthorized use or disclosure of the Data, including measures necessary to restore goodwill with stakeholders, including research subjects, collaborators, governmental authorities, and the public.

4.8. Agents and Subcontractors. [PARTY B] shall ensure that any agents, including subcontractors, to whom it provides the Data agree to the same restrictions and conditions listed in this agreement.

4.9. No Modification of Data. [PARTY B] shall not copy, decompile, modify, reverse engineer, or create derivative works out of any of the Data.

5. Term. This agreement will commence on the Effective Date and continue as long as [PARTY B] retains the Data, unless terminated earlier (the "Term").

6. Representations

6.1. Mutual Representations

(a) **No Restriction.** Neither party is under any restriction or obligation that could affect its

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of any material contract].

6.2. [PARTY A]'s Representations

(a) **Ownership.** [PARTY A] has the [exclusive] right to grant [PARTY A]'s use of the Data.

(b) **No Prior Grant or Transfer.** [PARTY A] has not

(i) granted and is not obligated to grant any license to any third party that would conflict with the license grant under section [LICENSE GRANT TO USE DATA], or

(ii) assigned or exclusively licensed, and is not obligated to assign or exclusively license, use of the Data to any third party that would conflict with the license grant under section [LICENSE GRANT TO USE DATA].

7. No Warranty

7.1. Provided "As Is". The Data is provided "as is."

7.2. No Warranty of Accuracy or Completeness. [PARTY A] does not make any warranty as to the accuracy or completeness of the Data.

8. Confidentiality Obligations. The parties shall continue to be bound by the terms of the non-disclosure agreement between the parties, dated [DATE] and attached to this agreement on [ATTACHMENT].

9. Intellectual Property Ownership

9.1. No License to Existing Intellectual Property. Except for any Intellectual Property rights included in the [DELIVERABLE] to use Data, the parties hereby acknowledge that this agreement does not constitute a grant by either party to the other of any license or right to either party's Intellectual Property existing as of the Effective Date.

9.2. Ownership of Developed Intellectual Property. If either party develops any new Intellectual Property in connection with this, the parties shall enter into a separate definitive agreement regarding the ownership of that new Intellectual Property.

10. Publications

10.1. Copies of Proposed Publications. [PARTY B] shall provide [PARTY A] with copies of any proposed publication or presentation at least [three] months in advance of the submission of the proposed publication or presentation to a journal, editor, or other third party.

10.2. Review Period. [PARTY A] will have [three] months after receipt of the materials to object to the proposed presentation or publication, because there is patentable or potentially patentable subject matter that needs protection.

10.3. [PARTY A]'s Objection. If [PARTY A] does makes an objection, [PARTY B] shall refrain from publishing or presenting the materials for [three] months from date of its receipt

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referred to in section [RESEARCH WORK] or the date of termination of this agreement, as applicable.

11. **Use of Name.** Neither party will use the other party's name, logos, trademarks, or other marks without that party's written consent.

12. **Termination**

12.1. **Termination on Notice.** Either party may terminate this agreement for any reason on [TERMINATION NOTICE BUSINESS DAYS] Business Days' notice to the other party.

12.2. **Termination for Material Breach.** Each party may terminate this agreement with immediate effect by delivering notice of the termination to the other party, if

(a) the other party fails to perform, has made or makes any inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations, and

(b) the failure, inaccuracy, or breach continues for a period of [BREACH CONTINUATION DAYS] Business Days' after the injured party delivers notice to the breaching party reasonably detailing the breach.

12.3. **Termination for Insolvency.** If either party becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation, the other party may terminate this agreement with immediate effect.

13. **Return or Destruction of Data and Property.** On the expiration or termination of this agreement, or on [PARTY A]'s request, [PARTY B] shall promptly

13.1. return the Data and any other property, information, and documents, including Confidential Information, provided by [PARTY A],

13.2. destroy all copies it made of Data and any other property, information, and documents, including Confidential Information, and

13.3. if requested by [PARTY A], deliver to [PARTY A] a certificate confirming [PARTY B]'s compliance with the return or destruction obligation under this section.

14. **Indemnification**

14.1. **Indemnification by [PARTY B].** [PARTY B] (as an indemnifying party) shall indemnify [PARTY A] (as an indemnified party) against all losses and expenses arising out of any proceeding

(a) brought by either a third party or [PARTY A], and

(b) arising out of [PARTY B]'s breach of its obligations, representations, warranties, or covenants under this agreement.

14.2. **Mutual Indemnification.** Each party (as an indemnifying party) shall indemnify the

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(b) **Failure to Notify.** If the indemnified party fails to notify the indemnifying party of the indemnifiable proceeding, the indemnifying will be relieved of its indemnification obligations to the extent it was prejudiced by the indemnified party's failure.

14.4. **Exclusive Remedy.** The parties' right to indemnification is the exclusive remedy available in connection with the indemnifiable proceedings described in this section [INDEMNIFICATION].

15. **Definitions**

"Business Day" means a day other than a Saturday, a Sunday, or any other day on which the principal banks located in New York, New York are not open for business.

"Data" is defined in section [DESCRIPTION OF DATA].

"Disclosure Schedule" means the schedules delivered, before the execution of this agreement, by each party to the other party which list, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision of this agreement or as an exception to one or more of the representations or warranties made by the party, or to one or more of the covenants of the party.

"Effective Date" is defined in the introduction to this agreement.

"Intellectual Property" means any and all of the following in any jurisdiction throughout the world (a) trademarks and service marks, including all applications and registrations, and the goodwill connected with the use of and symbolized by the foregoing, (b) copyrights, including all applications and registrations related to the foregoing, (c) trade secrets and confidential know-how, (d) patents and patent applications, (e) websites and internet domain name registrations, and (f) other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys' fees for past, present, and future infringement, and any other rights relating to any of the foregoing).

"Law" means

(a) any law (including the common law), statute, bylaw, rule, regulation, order, ordinance, treaty, decree, judgment, and

(b) any official directive, protocol, code, guideline, notice, approval, order, policy, or other requirement of any Governmental Authority having the force of law

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"[License Grant]" is defined in section [LICENSE GRANT TO USE DATA].

"Purpose" is defined in section [PURPOSE OF DATA SHARING].

"Term" is defined in section [TERM].

16. **General Provisions**

16.1. **Entire Agreement.** The parties intend that this agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this agreement and refer to this agreement,

(a) represent the final expression of the parties' intent relating to the subject matter of this agreement,

(b) contain all the terms the parties agreed to relating to the subject matter, and

(c) replace all of the parties' previous discussions, understandings, and agreements relating to the subject matter of this agreement.

16.2. **Assignment.** Neither party may assign this agreement or any of their rights or obligations under this agreement without the other party's written consent.

16.3. **Notices**

(a) **Method of Notice.** The parties shall give all notices and communications between the parties in writing by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid[, (iv) fax], or (v) electronic mail] to the party's address specified in this agreement, or to the address that a party has notified to be that party's address for the purposes of this section.

(b) **Receipt of Notice.** A notice given under this agreement will be effective on

(i) the other party's receipt of it, or

(ii) if mailed, the earlier of the other party's receipt of it and the [fifth] business day after mailing it.

16.4. **Governing Law.** This agreement shall be governed, construed, and enforced in accordance with the laws of the State of [GOVERNING LAW STATE], without regard to its conflict of laws rules.

16.5. **Interpretation**

(a) **References to Specific Terms**

(i) **Accounting Principles.** Unless otherwise specified, where the character or amount of any asset or liability, item of revenue, or expense is required to be determined, or any consolidation or other accounting computation is required to be made, that determination or calculation will be made in accordance with the generally accepted accounting principles defined by the professional accounting industry in effect in the United States ("GAAP").

8.2.3. COMMERCIAL ACTIVITY TEMPLATES

8.2.3.1. Data Licensing Agreement Sample

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investigated the facts related to that statement and made reasonable inquiries of other individuals reasonably likely to have knowledge of facts related to that statement.

(v) **Statutes, etc.** Unless specified otherwise, any reference in this agreement to a statute includes the rules, regulations, and policies made under that statute and any provision that amends, supplements, supersedes, or replaces that statute or those rules or policies.

(b) **Number and Gender.** Unless the context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders.

(c) **Headings.** The headings used in this agreement and its division into sections, schedules, exhibits, appendices, and other subdivisions do not affect its interpretation.

(d) **Internal References.** References in this agreement to sections and other subdivisions are to those parts of this agreement.

(e) **Calculation of Time.** In this agreement, a period of days begins on the first day after the event that began the period and ends at 5:00 p.m. [TIME ZONE] Time on the last day of the period. If any period of time is to expire, or any action or event is to occur, on a day that is not a Business Day, the period expires, or the action or event is considered to occur, at 5:00 p.m. [TIME ZONE] Time on the next Business Day.

(f) **Construction of Terms.** The parties have each participated in settling the terms of this agreement. Any rule of legal interpretation to the effect that any ambiguity is to be resolved against the drafting party will not apply in interpreting this agreement.

(g) **Conflict of Terms.** If there is any inconsistency between the terms of this agreement and those in any schedule to this agreement or in any document entered into under this agreement, the terms of [this agreement/[SPECIFIED AGREEMENTS]] will prevail. The parties shall take all necessary steps to conform the inconsistent terms to the terms of [this agreement / [SPECIFIED AGREEMENTS]].

16.6. **Severability.** If any part of this agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.

16.7. **Waiver**

(a) **Affirmative Waivers.** Neither party's failure or neglect to enforce any rights under this agreement will be deemed to be a waiver of that party's rights.

(b) **Written Waivers.** A waiver or extension is only effective if it is in writing and signed by the party granting it.

(c) **No General Waivers.** A party's failure or neglect to enforce any of its rights under this agreement will not be deemed to be a waiver of that or any other of its rights.

(d) **No Course of Dealing.** No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

16.8. **No Third-Party Beneficiaries.** Unless explicitly stated otherwise elsewhere in this agreement, no Person other than the parties themselves has any rights or remedies under this agreement.

https://www.sec.gov/Archives/edgar/data/1474439/000119312509218829/dex1016.htm

CONFIDENTIAL TREATMENT

consent will not be unreasonably withheld, except that either party may assign this Agreement to a parent, subsidiary, or any entity that acquires substantially all of its stock, assets or business. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

3.2 No Third Party Beneficiaries. This Agreement is between NT and LICENSEE. No third party beneficiaries are intended.

3.3 Independent Contractors. The relationship of NT and LICENSEE established by this Agreement is that of independent contractors, and nothing contained in this Agreement will be construed to (a) give either party the power to direct and control the day-to-day activities of the other, (b) constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking, or (c) allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.

4. GRANT OF LICENSE

4.1 License. Subject to LICENSEE's performance of its obligations under this Agreement, NT hereby grants LICENSEE with respect to each Territory License a non-exclusive, non-transferable (except as set forth in Section 3.1 (Successors and Assigns)), non-sublicensable license under NT's Intellectual Property Rights to use the NAVTECH Data solely as further specified as the "Use Rights" in such Territory License and solely for the term and Licensed Territory and in the Application(s) specified in such Territory License.

4.2 Additional Licenses. Subject to future agreement of the parties, NT may grant future Territory Licenses to LICENSEE covering additional Use Rights. Licensed Territories and Applications. Any such license shall be set forth as an additional Territory License, shall be signed by the appropriate parties, and shall be subject to all of the terms and conditions of this Agreement except to the extent such Territory License expressly indicates otherwise.

4.3 End-User Licenses. Each present and future Territory License shall include an attachment containing end-user terms provided and/or approved by NT that,

CONDITIONS AND TERMS OF GRANT

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and obligations of each party under this signed directly or indirectly without the prior

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28/05/2019, 9:15

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as set forth in (i) Addendum 2 attached hereto, .license where the Licensed Territory includes any a, and (ii) Addendum 3 attached hereto, which shall re the Licensed Territory includes any of the herein.

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Notices. LICENSEE shall conspicuously display 's proprietary rights legends, copyright notices, names and similar information and designations ds"), as specified by NT (including, without H ON BOARD and other NT Marks and Legends nes or successors or equivalents thereof), on on-screen displays, on splash and start-up d and electronic), and in all packaging and other y or relate to the Application distributed by or on collectively, "Collateral"). Without limiting the NAVTECH Data is used and/or where Collateral USEE shall attribute NT as the creator and source d shall not in any way be misleading in that regard EEE or any third party is the creator or source of

During the term of this Agreement, NT grants ransferable, non-sublicensable right to use the NT er Section 12.1. LICENSEE must conspicuously playing the NT Marks that NT is the owner thereof erined trademarks and/or service marks of NT, as herein shall constitute a grant or other transfer to erest in the NT Marks or any other Intellectual ation or expiration of this Agreement for any ely cease all use of NT Marks.

may display LICENSEE's trade name.

company and product descriptions and similar information and designations (collectively "LICENSEE Marks"), relating to Applications licensed hereunder which use the NAVTECH Data, on web pages, in advertisements, brochures, exhibits and other marketing and promotional material of NT (collectively "NT Collateral"), provided that all such usage is in accordance with LICENSEE's guidelines for use of the LICENSEE Marks. During the term of this Agreement, LICENSEE grants NT a non-exclusive, non-transferable, non-sublicensable right to use LICENSEE Marks as permitted in the preceding sentence. Nothing stated herein shall constitute a grant or other transfer to NT of any right, title or interest in LICENSEE Marks. Upon termination or expiration of this Agreement for any reason, NT shall immediately cease all use of LICENSEE Marks.

12.4 Demonstrations. At NT's request, LICENSEE shall without charge allow NT to demonstrate LICENSEE's commercially launched Application for customer and general corporate demonstrations and at trade shows and other promotional events.

ARTICLES 13-15: DISCLAIMER, LIMITATION AND INDEMNIFICATION

13. DISCLAIMER

THE NAVTECH DATA IS PROVIDED "AS IS". NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, EACH PARTY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF QUALITY, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, NT DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE NAVTECH DATA OR ANY OTHER MATERIALS IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.

14. LIMITATION ON LIABILITY

14.1 Limits on Liability

14.1(a) EXCEPT AS OTHERWISE PROVIDED IN THE NEXT SENTENCE, AND NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE TO THE CONTRARY, NEITHER PARTY

CONFIDENTIAL TREATMENT

UNDER ANY ARTICLE OF THIS TRACT, NEGLIGENCE, STRICT LIABILITY OR THEORY FOR ANY INDIRECT, SPECIAL, OR PUNITIVE DAMAGES, OR LOST PROFITS. ION SHALL NOT APPLY TO BREACHES OF "J" OR TO ACTIONS OF LICENSEE BEYOND THE ITED HEREUNDER.

Y OF NT WITH RESPECT TO THE NAVTECH THEREOF UNDER ANY WARRANTY, Y, CONTRACT OR OTHER THEORY WILL BE IS IMPRACTICAL, TO REVEAL OF THE T) WITHSTANDING THE FOREGOING, IN NO WITH RESPECT TO THIS AGREEMENT EXCEED F FOR THE [*****] PERIOD, LICENSEE T RESPONSIBLE FOR AND WILL HAVE NO PFTWARE, OR OTHER ITEMS OR ANY PERSONS OTHER THAN NT, LICENSEE PS THAT THE LIMITATION OF LIABILITY S THE ALLOCATION OF RISK REFLECTED BY THE PARTIES AND THAT OTHERWISE THIS E BEEN MADE.

shall be liable to the other for a failure to perform greement, except for payment obligations under in which such performance is delayed due to able control, provided such party notifies the other

cept for NT's agreement to indemnify LICENSEE as 2, LICENSEE shall indemnify and hold harmless loyees, agents and affiliates from and against any cause or event which is attributable to or possession of the NAVTECH Data or

failure to perform or comply with any term of this Agreement, including but not limited to liabilities for personal injury and/or product liability.

15.2 Intellectual Property Indemnification. Subject to LICENSEE's performance of its obligations under this Agreement, NT shall defend or settle at its sole option and expense any claim or suit against LICENSEE arising out of or in connection with an assertion that the NAVTECH Data infringes any [*****] copyrights or trademarks and NT shall indemnify and hold harmless LICENSEE from damages, costs, and attorneys' fees, if any, finally awarded in such suit or the amount of the settlement thereof; provided that (i) NT is promptly notified in writing of such claim or suit, (ii) NT shall have the sole control of the defense and/or settlement thereof, and (iii) LICENSEE furnishes to NT, on request, all relevant information available to LICENSEE and reasonable cooperation for such defense, at NT's expense. The foregoing in this Section 15.2 shall be the sole obligation of NT and the exclusive remedy of LICENSEE with respect to any alleged infringement by the NAVTECH Data of any third party's intellectual Property Rights. LICENSEE shall not admit or settle any such claim or suit without the prior written consent of NT. NT shall have no obligation under this Section 15.2 if and to the extent that such claim or suit arises from: (1) compliance by NT with LICENSEE's specifications, (2) modification of the NAVTECH Data other than by NT, (3) the combination of the NAVTECH Data with products or services other than those supplied by NT, (4) LICENSEE continuing any manufacturing, distribution, or licensing after being notified of any allegedly infringing activity or after being informed of or provided with modifications that would have avoided the alleged infringement, or (5) LICENSEE's use of the NAVTECH Data that is not strictly in accordance with the license granted under this Agreement. In the event of a claim of infringement, a claim of violation of Intellectual Property Rights or a claim of misappropriation or suit against NT, which claim or suit is based on any conduct described in the preceding sentence, LICENSEE will defend or settle, at its sole option and expense, such claim or suit to the extent based on such conduct, and LICENSEE shall indemnify and hold harmless NT and its officers, directors,

[*****] Certain portions denoted with an asterisk have been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

CONFIDENTIAL TREATMENT

damages, costs, and attorneys' fees, if any, or the amount of the settlement thereof, to be paid that (i) LICENSEE is promptly notified in writing and (ii) LICENSEE shall have the sole control of the defense and reasonable cooperation for such defense, at the expense of LICENSEE; on request, all information shall be provided to LICENSEE.

CONFIDENTIALITY, DISPUTES AND CONSTRUCTION

algorithms, know-how and ideas and all other information that it obtains from the other party ("Confidential Information") of the party and unambiguously allowed herein, the party and not use or disclose any Confidential Information to any third party without the prior written consent of the disclosing party, the disclosing party or destroy (and provide certification of destruction) all documents and information and any and all copies or extracts of such Confidential Information that are obtained under this ARTICLE with respect to the party (1) is or has become readily publicly known to the receiving party or its employees or agents or (2) is or has become known to a third party lawfully in possession of such Confidential Information; or (3) was obtained by the receiving party without restriction prior to its receipt by the receiving party. Notwithstanding the foregoing, the party shall not be obligated to disclose such Confidential Information, or to restrict access to such Confidential Information, or to take any action to restrict access to such Confidential Information, if such Confidential Information is, or is derived from, information that is lawfully available to the public from any source other than the party or its employees or agents.

to Intellectual Property Rights, if a dispute arises regarding the interpretation or performance of this Agreement, the parties agree to hold a meeting to discuss the dispute, and to request by a party therefor, attended by the other party, to resolve the dispute.

dispute, to attempt in good faith to negotiate a resolution of the dispute prior to pursuing other available remedies. If, within [****] days after such meeting, the parties have not succeeded in resolving the dispute, either party may protect its interests by any lawful means available to it.

17.2 Limitation on Action for Breach. Except with respect to any breach of LICENSEE's payment obligations hereunder or any unauthorized use of NT's Intellectual Property Rights, any and all claims arising from or in connection with any breach of this Agreement must be brought within [****], or such longer period as required by mandatory applicable law, from the date of such breach.

18. FORM & EFFECT OF AGREEMENT

18.1 Entire Agreement. This Agreement together with its Schedules and other attachments (if any) constitutes the entire agreement between the parties regarding the subject matter hereof and supercedes any and all prior negotiations, promises, commitments, undertakings, and agreements of the parties relating thereto.

18.2 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

18.3 Modification. This Agreement may be modified or amended only by a written instrument duly executed by the parties hereto.

18.4 Waiver of Breach. No waiver of any kind under this Agreement will be deemed effective unless set forth in writing and signed by the party charged with such waiver, and no waiver of any right arising from any breach or failure to perform will be deemed to be a waiver or authorization of any other breach or failure to perform or of any other right arising under this Agreement.

18.5 Notices. All notices required or permitted under this Agreement shall be delivered by hand, fax or email.

[****] Certain portions denoted with an asterisk have been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

CONFIDENTIAL TREATMENT

addressed if to NT and if to LICENSEE at the address, respectively, set forth in ARTICLE 1 of this Agreement. If either party shall have furnished to the other party written communications shall be effective (1) if sent by first class mail, postage prepaid, and (2) if sent otherwise, by electronic mail, and (3) if sent by electronic mail, by electronic mail.

18.10 No Additional Terms. Unless and to the extent expressly agreed to in writing between LICENSEE and NT, no other terms and conditions, whether contained in LICENSEE's purchase order or otherwise, shall be binding on NT. NT hereby expressly rejects all terms and conditions not contained herein, whether sent to or received by NT prior to or after the date of this Agreement.

18.11 Full Understanding. The parties acknowledge that they fully understand and agree to all of their rights and obligations under this Agreement, and that this Agreement is the result of informed negotiations between sophisticated parties. The parties further acknowledge and agree that they have not relied on any representation, inducement, or anything else in executing this Agreement that is not set forth expressly herein.

ent shall be construed and governed by the laws of the State of Illinois without giving effect to the conflict of laws provisions of the International Sale of Goods Convention.

ies have caused their duly authorized representatives to execute this Agreement as of the Effective Date set forth in ARTICLE 1 of this Agreement.

CORPORATION

TELEVIGATION, INC.

IN
GENERAL COUNSEL

By: /s/ Salman Dhanani
Name: SALMAN DHANANI
Title: DIRECTOR OF MARKETING

CONFIDENTIAL TREATMENT

Addendum 1

the NAVTECH Data supplied to United States government End Users, or any other entity seeking or applying rights similar to those exercised by the United States Department of Defense, the NAVTECH Data is licensed with "Limited Rights" in accordance with the rights set forth at DFARS 252.227-7013(f)(3), and shall be treated in accordance with such Notice:

LIMITED RIGHTS

CONTRACT NO.:
CONTRACTOR (MANUFACTURER/SUPPLIER) NAME: NAVIGATION TECHNOLOGIES CORPORATION
Contractor (MANUFACTURER/SUPPLIER) ADDRESS: 222 Merchandise Mart Plaza,
Suite 900, Chicago, Illinois 60654

rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(3) of the Data-Noncommercial Items clause contained in the above identified contract. Any reproduction of technical data or other information marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided with this data must promptly notify the above named Contractor.

Any agency acquisitions, the NAVTECH Data is licensed with the rights set forth at FAR 52.227-14(g)(1), RIGHTS IN DATA-Noncommercial Items clause contained in the above identified contract. Any reproduction of technical data or other information marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided with this data must promptly notify the above named Contractor.

LIMITED RIGHTS NOTICE (JUN 1987)

Notwithstanding to whom the NAVTECH Data is licensed, the Contractor shall not, without written permission of the Contractor, be used for any purpose other than that for which it was originally intended, except that the Government may disclose these data outside the Government for operational purposes permitting disclosure of such Data.

The NAVTECH Data is Navigation Technologies Corporation 222 Merchandise Mart Plaza, Suite 900, Chicago, Illinois 60654.

CONFIDENTIAL TREATMENT

Addendum 2

the NAVTECH Data for the Licensed Territory of Canada, which may include or reflect data from third party licensors, including Her Majesty the Queen.

LICENSEE agrees that its use of the Third Party Data is limited to the following purposes:
1. THE THIRD PARTY DATA IS LICENSED ON AN "AS IS" BASIS. LICENSEE SHALL NOT BE LIABLE FOR ANY LOSS, INJURY OR DAMAGES, DIRECT OR INDIRECT, ARISING FROM THE USE OR POSSESSION OF THE DATA OR THE NAVTECH DATA. THE LICENSEE SHALL NOT BE LIABLE FOR ANY LOSS, INJURY OR DAMAGES, DIRECT OR INDIRECT, ARISING FROM THE USE OR POSSESSION OF THE DATA OR THE NAVTECH DATA. THE LICENSEE SHALL NOT BE LIABLE FOR ANY LOSS, INJURY OR DAMAGES, DIRECT OR INDIRECT, ARISING FROM THE USE OR POSSESSION OF THE DATA OR THE NAVTECH DATA.

MAJESTY THE QUEEN IN RIGHT OF CANADA, SUCH DATA IS LICENSED ON AN "AS IS" BASIS. THE LICENSEE SHALL NOT BE LIABLE FOR ANY LOSS, INJURY OR DAMAGES, DIRECT OR INDIRECT, ARISING FROM THE USE OR POSSESSION OF THE DATA OR THE NAVTECH DATA. THE LICENSEE SHALL NOT BE LIABLE FOR ANY LOSS, INJURY OR DAMAGES, DIRECT OR INDIRECT, ARISING FROM THE USE OR POSSESSION OF THE DATA OR THE NAVTECH DATA.

2. THE LICENSEE SHALL NOT BE LIABLE FOR ANY LOSS, INJURY OR DAMAGES, DIRECT OR INDIRECT, ARISING FROM THE USE OR POSSESSION OF THE DATA OR THE NAVTECH DATA. THE LICENSEE SHALL NOT BE LIABLE FOR ANY LOSS, INJURY OR DAMAGES, DIRECT OR INDIRECT, ARISING FROM THE USE OR POSSESSION OF THE DATA OR THE NAVTECH DATA.

THE LICENSEE SHALL NOT BE LIABLE FOR ANY LOSS, INJURY OR DAMAGES, DIRECT OR INDIRECT, ARISING FROM THE USE OR POSSESSION OF THE DATA OR THE NAVTECH DATA. THE LICENSEE SHALL NOT BE LIABLE FOR ANY LOSS, INJURY OR DAMAGES, DIRECT OR INDIRECT, ARISING FROM THE USE OR POSSESSION OF THE DATA OR THE NAVTECH DATA.

3. THE LICENSEE SHALL NOT BE LIABLE FOR ANY LOSS, INJURY OR DAMAGES, DIRECT OR INDIRECT, ARISING FROM THE USE OR POSSESSION OF THE DATA OR THE NAVTECH DATA. THE LICENSEE SHALL NOT BE LIABLE FOR ANY LOSS, INJURY OR DAMAGES, DIRECT OR INDIRECT, ARISING FROM THE USE OR POSSESSION OF THE DATA OR THE NAVTECH DATA.

END USER SHALL INDEMNIFY AND SAVE HARMLESS THE LICENSEE, INCLUDING HER MAJESTY THE QUEEN AND THE MINISTER, AND THEIR OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY CLAIM, DEMAND OR ACTION, IRRESPECTIVE OF THE NATURE OF THE CAUSE OF THE CLAIM, DAMAGES OR INJURIES (INCLUDING INJURIES RESULTING IN DEATH) ARISING OUT OF THE USE OR POSSESSION OF THE DATA OR THE NAVTECH DATA.

4. Additional Provisions: This Addendum is in addition to all of the rights and obligations of the parties under the Agreement. To the extent that any of the provisions of this Addendum are inconsistent with, or conflict with, provisions of the Agreement, the provisions of this Addendum shall prevail.

4. Additional Provisions: This Addendum is in addition to all of the rights and obligations of the parties under the Agreement. To the extent that any of the provisions of this Addendum are inconsistent with, or conflict with, provisions of the Agreement, the provisions of this Addendum shall prevail.

INCLUDE OR REFLECT DATA OF LICENSEES,

CONFIDENTIAL TREATMENT

Addendum 3

NAVTECH Data for and to the extent indicated respecting any Licensed Territory including any country of **Europe**, which may include or may include any country licensees:

If not have any right or license to use, or license the use of, the NAVTECH Data for any Licensed Territory including any country of Europe to be used (as used herein "paper map" shall mean any literary work in the form of a map fixed on a paper or paper-like medium).

With respect to NAVTECH Data for the Licensed Territory of Great Britain, LICENSEE acknowledges and agrees that the Ordnance Survey ("OS") may enforce compliance with the OS copyright notice (see Section 3 below) and paper map requirements (see Section 2 above)

Provisions apply to any grant of license for use of NAVTECH Data that includes Traffic Codes.

Applicable to Traffic Codes. LICENSEE acknowledges and agrees that in certain countries of the Licensed Territory of Europe, LICENSEE will be required to directly from third party RDS-TMC code providers to receive and use the Traffic Codes in the NAVTECH Data and to deliver to End-Users applications, products and/or services in any way derived from or based on such Traffic Codes. For such countries, NT shall deliver the operating Traffic Codes to LICENSEE only after receiving certification from LICENSEE of its having obtained such rights.

With respect to Belgium, LICENSEE shall, for each provision of information, data, applications, products and/or services that uses Traffic Codes, provide the following notice to the End-User: "Traffic information is provided by the Ministerie van de Vlaamse Gemeenschap and the Ministerie van Transport."

All Copies and/or packaging relating thereto shall include the respective Third Party Notices set forth below and used as described below and Territory (or portion thereof) included in such Copy:

Notice

The following notice must appear on all Copies, and may also appear on packaging:

"source: G eoroute  IGN France & BD Cartho  IGN France"

"Die Grundlegenden wurden mit Genehmigung der zustandigen Behorden entnommen."

"Die Grundlegenden wurden mit Genehmigung der zustandigen Behorden entnommen."

"Based on Ordnance Survey electronic data and used with the permission of the Controller of Her Majesty's Stationary Office   Crown Copyright, 1995."

"Based upon Crown Copyright material."

"La Bence Dati Italiana   stata prodotta usando quale riferimento anche cartografia numerica ed al tratto prodotta e fornita della Regione Toscana."

"Copyright   2000; Norwegian Mapping Agency"

"Source: IgeoE   Portugal"

"Informaci n geogr fica propiedad del CNIG"

"Based upon electronic data   National Land Survey Sweden."

28/05/2019, 9:15

8.2.3.2. Value-Added Reseller VAR Data Access Sub-Licence Agreement Sample

Data Access Sub-Licence Agreement

Land Services SA Operating Pty Ltd as trustee for the Land Services SA Operating Trust

and



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Data Access Sub-Licence Agreement

Date

Parties

Land Services SA Operating Pty Ltd

ACN 618 229 815 as trustee for the Land Services SA Operating Trust
ABN 85 836 650 939 of Level 7, 50 Martin Place, Sydney, New South
Wales 2000

(Licensor)

[•]

ABN [•] of [•]

(Licensee)

Recitals

- A. The Licensor collects and has access to a range of property sales data in the performance of its obligations under a Land Services Agreement between the Licensor and the Treasurer for and on behalf of the Crown in right of the State of South Australia.
- B. The Licensee wishes to have access to such data to develop information services about property sales and to provide such services to customers on a commercial basis.
- C. The Licensor agrees to provide property sales data to the Licensee for those purposes on the terms and conditions set out in this Agreement.

1. Definitions and Interpretation Clauses

1.1 Definitions

In this Agreement:

Agreement	means this agreement and includes the Schedule.
Audit	has the meaning given to that term in clause 12.3(b).
Audit Report	has the meaning given to that term in clause 12.3(e).
Audited Royalty	has the meaning given to that term in clause 12.3(f)(i).
Commercialise	means, in respect of the Data, the distribution, sale, licensing or hire, or offering for distribution, sale, licensing or hire, (whether for remuneration or otherwise), to any person, of anything that embodies the Data (including the Derivative Product), and includes the provision of services based on the Data or any Derivative Product.
Commercialisation Revenue	means the revenue set out in Item 6 of the Schedule.
Commencement Date	means the date set out in Item 1 of the Schedule.
Confidential information	means information which is disclosed by or on behalf of a party to this Agreement to the other party and which: <ul style="list-style-type: none"> (a) is by its nature confidential or by the circumstances in which it is disclosed is confidential; or (b) is disclosed to the other party in confidence.

Data	means the compilation of information described in Item 5 of the Schedule, and includes: <ul style="list-style-type: none"> (a) any of that information; and (b) any additional information provided by the Licensor which is annexed to, or included with, that information when delivered, for use as an aid in interpreting it.
Derivative Product(s)	means any one of the one or more computer programs or information products listed in Item 7 of the Schedule (the details of which the Licensee has designated as Confidential Information under this Agreement), each of which is integrated with the Data and allow users to enquire upon the Data, and which specifically excludes any product which provides, or has the effect of providing, all or a substantial amount of the Data to the Customer.
End Date	means the date set out in Item 2 of the Schedule.
Financial Year	means, in any given year, the period commencing [] and ending on [].
Force Majeure	means a circumstance beyond the reasonable control of the party seeking to rely on Force Majeure and which results in that party being unable to observe or perform on time an obligation under this Agreement. Such circumstances include, but are not be limited to: <ul style="list-style-type: none"> (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; and (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution.
Government	means the Government of the State of South Australia.

ST Act	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
dependent auditor	means a partner of an independent chartered accounting firm which is not an auditor or adviser to either party or to a related body corporate (as that term is defined in the <i>Corporations Act 2001</i> (Cth)) of either party.
intellectual property Rights	means any patent, copyright, trademark, trade name, design, trade secret, know-how or other form of confidential information or any right to registration or renewal of such rights and any other form of intellectual property right, whether arising before or after the execution of this Agreement.
last Royalty Calculation Period	means the last Royalty Calculation Period for the Term.
licence Year	means a period of 12 months starting on 1 April and during which this Agreement is in force, except that: <ul style="list-style-type: none"> (a) the first Licence Year is the period starting on the Commencement Date and ending on the first 31 March to fall during the Term; and (b) whether or not this Agreement runs for the full Term, the last Licence Year is the period starting on the last 1 April to fall during the Term and ending on the expiry or earlier termination of this Agreement.
personal information	means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

and derived from the Derivative Products and used for the purposes of calculating the Royalty.

Quarter	means a period of 3 consecutive calendar months.
Revised Published Revenue	has the meaning set out in clause 12.4(a)(i).
Revised Royalty	has the meaning given to that term in clause 12.3(f)(ii).
Royalty	has the meaning given to that term in clause 12.1.
Royalty Calculation Period	means the 12 month period of the Licensee's Financial Year for which the Licensee has Published Revenue.
Royalty Payment Period	means each period of 12 months commencing on the Commencement Date and if this Agreement expires or is terminated in its entirety before the end of a Royalty Payment Period, the last Royalty Payment Period will end on the date on which this Agreement expires or terminates.
Royalty Information	has the meaning given in clause 12.2(a).
Security Audit	means a security audit carried out by a suitable qualified independent service provider engaged by the Licensor for that purpose in relation to the Derivative Products and the Licensee's security and other practices and procedures.
Security Audit Report	means a report in respect of a Security Audit.
Self-Assessment Compliance Statement	means a statement in the form and containing such information as determined by the Licensor (in its sole discretion) in-writing from time to time, and which must include the Licensee's assessment of its performance under this Agreement against the criteria set out in clause 9.1(b).

Interpretation

In this Agreement, the clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer, and, unless the contrary intention appears:

- (a) a cross reference to a clause number is a reference to its subclauses;
- (b) words in the singular number include the plural and vice versa;
- (c) words importing a gender include any other gender;
- (d) a reference to including, includes or include must be read as if it is followed by "without limitation";
- (e) a reference to a person includes a partnership and a body, whether corporate or otherwise;
- (f) 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;
- (g) monetary references are references to Australian currency; and
- (h) a reference to a party includes that party's administrators, successors and permitted assigns.

Term

Initial term

The "Term" of this Agreement is the period during which this Agreement remains in operation, being a term commencing on the Commencement Date and ending at the later of:

- (a) the End Date; or
- (b) the expiry of the Extension Term, in the event this Agreement is extended pursuant to clause 2.2(b).

unless terminated earlier in accordance with the provisions of this Agreement.

Extension of Term

3. Grant of Licence

3.1 Licence

Subject to this Agreement, including the payment of the applicable Royalty, the Licensor grants to the Licensee a non-exclusive, non-transferable licence for the Term, to:

- (a) use the Data for the purposes of creating, developing and maintaining the Derivative Products; and
- (b) Commercialise the Data by licensing the Derivative Products to third parties, and for those purposes, the Licensee may:
 - (c) merge the Data with any products of the Licensee;
 - (d) make such copies of the Data as are strictly necessary for delivery of Derivative Products; and
 - (e) install any Derivative Product at a Customer's premises.

3.2 Restrictions on use

- (a) The Licensee may permit a person to use a Derivative Product only if that person has entered into a licence agreement with the Licensee that complies with the requirements of this Agreement (**Product Licence**), and that Product Licence has not expired or otherwise terminated.
- (b) The Licensee may not Commercialise or otherwise use the Data except as permitted by clauses 3.1, 3.2(a) and 7.2(b), and then only within Australia.
- (c) The Licensee may not supply the Data to any person or otherwise give any person access to the Data, except in the following circumstances:
 - (i) to permit a person to use a Derivative Product pursuant to a Product Licence granted to that person; or
 - (ii) to a contractor or other person engaged to assist in the development or delivery of a Derivative Product of the Licensee pursuant to, and subject to compliance with, clause 20.

3.3 Government Statement

Copyright in this information belongs to the South Australian Government and the South Australian Government does not accept any responsibility for the accuracy or completeness of the information or its suitability for any purpose.

3.4 Aggregated statistical information

Except if, and to the extent that, it is directed not to do so by the Licensor, the Licensee may, despite clauses 3.2(b) and 3.2(c), publish aggregated statistical information derived from the Data, but, in doing so, must:

- (a) not include information about individual property sales;
- (b) include with each publication a statement in the following terms:

This information is based on data supplied by the South Australian Government and is published by permission. The South Australian Government does not accept any responsibility for the accuracy, completeness or suitability for any purpose of the published information or the underlying data.

- (c) comply with any other conditions reasonably imposed by the Licensor.

3.5 Other Licensee obligations

- (a) The Licensee must provide to the Licensor on an ongoing basis during the Term for contract management (e.g. licence checks) purposes, and at no charge to the Licensor, a single copy of (or on-line access to) all Derivative Products that access the Data and any new products.
- (b) The Licensee must process all Data files made available to the Licensee by the Licensor.

4. Intellectual Property Rights

4.1 Ownership of Intellectual Property Rights

- (a) The Licensor warrants to the Licensee that the Licensor is entitled to licence the Data under this Agreement.

4.2 Infringement

- (a) The Licensee warrants that no Derivative Product infringes the Intellectual Property Rights of any person.
- (b) The Licensee must notify the Licensor as soon as practicable of any infringement, suspected infringement or alleged infringement by a Derivative Product of the Intellectual Property Rights of any person.
- (c) Without limiting the generality of the preceding parts of this clause 4, if it is determined by any independent tribunal of fact or law or if it is agreed between the parties to the dispute that an infringement of Intellectual Property Rights by a Derivative Product has occurred, the Licensee must at its sole expense:
 - (i) modify the Derivative Product in order to avoid continuing infringement;
 - (ii) procure the right to continue the use or possession of the infringing software; or
 - (iii) if neither of those solutions can be achieved:
 - (A) cease marketing and distribution of the Derivative Product;
 - (B) terminate any Product Licences; and
 - (C) notwithstanding and in addition to any other obligation arising under this Agreement or at law, indemnify and hold harmless the Licensor in respect of any liability arising to a Customer in respect of the termination of such a licence or the cancellation of an order.

Government which has not been stated expressly in this Agreement or upon any descriptions or illustrations or specifications contained in any document including catalogues or publicity material produced by the Licensor or the Government; and

- (f) for the avoidance of doubt and without limiting the Licensor's rights in relation to the Data, the Licensor may, at any time during the Term, grant a licence to use the Data to any third party on the same or different terms and conditions (at the Licensor's absolute discretion) to this Agreement.

6. Data

6.1 Format of Data

- (a) Subject to clauses 6.1(b) and 6.2, the Licensor will deliver the Data to the Licensee in the format, at the times, and otherwise in accordance with Item 7 of the Schedule.
- (b) The Licensor may change:
 - (i) the format in which the Data is provided to the Licensee; or
 - the technology or systems on or through which the Data is provided, during the course of this Agreement, and in such circumstances the Licensor will use reasonable endeavours to provide notice of such a change, however the Licensee shall have no claim against the Licensor as a result of any such change.

6.2 Exclusion of information

Without limiting any other right of the Licensor under this Agreement, if, as a result of any change in law (or the interpretation or application of any law), or any change in Government policy, it becomes illegal, or contrary to Government policy, for the Licensor to deliver the Data to the Licensee unless it excludes some of the information comprised in the Data, the Licensor may thereafter exclude that information from the Data it delivers to the Licensee under this Agreement, and the Licensee will not be entitled to any damages or other compensation for the exclusion of the information.

5. Licensee's Acknowledgements

The Licensee acknowledges and agrees that:

- (a) the Data is gathered by the Licensor and the Government solely for purposes related to the Government's functions and that when the Government or Licensor is gathering and processing the Data neither are contemplating any purpose to which the Licensee may put the Data;

compromised, violated or otherwise prejudiced as a result, directly or indirectly, of any act or omission of the Licensee or a Customer; and

- (ii) no Derivative Product permits a Customer of the Licensee to electronically data match or correlate the data with data from other sources, which will or may diminish the privacy of natural persons.
- (b) The Licensee must comply with, and ensure that its Customers comply with, all applicable laws including those relating to Personal Information in relation to the Data and the Derivative Products.
- (c) Without limiting any of its other obligations under this Agreement, the Licensee must not:
 - (i) use the Data (whether directly or through the medium of a Derivative Product or any report or other thing generated by a Derivative Product) to assist it to compile a personalised contact list; or
 - (ii) use any list of addresses (or other information comprised in the Data) compiled from the Data (and whether generated by a Derivative Product or otherwise) to facilitate the provision by any person of advertising matter or any other information to, or otherwise to facilitate any person contacting, any other person, and whether for marketing purposes or for any other purpose, commercial or otherwise,

and the Licensee must not permit any other person to do such acts.

- (d) The Licensee must establish and maintain throughout the Term, privacy, security and other arrangements for ensuring compliance with its obligations under this Agreement (which may include arrangements for auditing Customers' businesses in order to ensure compliance with the terms of Product Licences). Those arrangements must be acceptable to the Licensor, acting reasonably. If the Licensor reasonably requests any change to the arrangements, the Licensee must promptly implement the change. For the purposes of this clause 7.1(d), the Licensee acknowledges that the Data has a confidentiality classification of "Public" under Government requirements, where "Public" means information authorised for unlimited public access and circulation.
- (e) The Licensee must at all times comply with the AS/NZS ISO/IEC 27001 standard for Information Security Management Systems, as amended from time

subject to the other restrictions and limitations on such products and Data provision as set out in this Agreement.

3. Security Audit

3.1 Commission of Security Audit

- (a) Unless the Government directs the Licensor to do so, if, at any stage during the Term, the Licensor knows, suspects or has reason to believe the Licensee is or is likely to be in breach of or not fully compliant with this Agreement, the Licensor may upon giving not less than 5 Business Days' notice in writing to the Licensee, commission a Security Audit in respect of the Licensee and the Derivative Products.
- (b) The Licensor will have the right to commission a Security Audit once in respect of each Licence Year, provided that this clause 8.1(b) will not limit the Licensor's rights to commission a further Security Audit:
 - (i) in accordance with this clause 8 to determine whether the recommendations of a Security Audit Report have been implemented;
 - (ii) if the Licensor becomes aware of any breach by the Licensee of its obligations under clause 7 of this Agreement;
 - (iii) for the purposes of clause 10.4(c); or
 - (iv) if the Government directs the Licensor to do so.
- (c) Except if the Government exercises its rights under clause 8.1(b)(iv) or directs the Licensor to commission a Security Audit, in which case the Licensee must pay all costs of the Security Audit reasonably incurred by the Licensor, each party will bear its own costs of a Security Audit commissioned under this clause 8.1 unless the results of the Security Audit determine:
 - (i) the recommendations of a Security Audit Report have not been implemented;
 - (ii) the Licensee has breached its obligations under clause 7; or

8.2 Implementation of recommendations

- (a) The Licensor may provide the Licensee with a written notice, containing a copy of the relevant Security Audit Report, requiring that the Licensee implement the recommendations of the Security Audit Report, in which case the Licensee must:
 - (i) satisfactorily implement the recommendations classified as "Urgent" within 30 days of the date of that notice, or within such lesser time as required by the Security Audit Report; and
 - (ii) satisfactorily implement the recommendations classified otherwise within the timeframes set out in the Security Audit Report (with such timeframes to be reasonably set by the Licensor and the service provider undertaking the Security Audit having regard to the nature of the recommendation, the likelihood or severity of the risk underlying the recommendation and the time and resources likely to be needed to implement the recommendation); or
 - (iii) otherwise, and with the prior approval of the Government and subject to clause 8.2(b), demonstrate to the Licensor's reasonable satisfaction why it is not reasonable to implement the recommendation including taking into account:
 - (A) the time and cost resources of implementing the recommendation compared with the Data security and integrity risks the recommendation is intended to mitigate or remove;
 - (B) whether the Licensee will be able to comply with its obligations under this Agreement (including clause 7) despite the recommendation not being followed; and
 - (C) any other factor the Licensor reasonably considers relevant to the decision.
- (b) The Licensee acknowledges the approval or acceptance by the Licensor of the Licensee not implementing a recommendation is subject to acceptance by the Government and could result in the Licensor suspending the delivery of the Data or suspending the Licensee's rights to use the Data under this Agreement.
- (c) The Licensor may acting reasonably if there is no alternate method to demonstrate to the reasonable satisfaction of the Licensor the implementation

implementation of any recommendation pursuant to this clause to the reasonable satisfaction of the Licensor) subsequently carry out a further audit, at the Licensee's cost, to determine whether it has implemented the relevant recommendations.

- (e) If the Licensee fails to comply with its obligations under this clause, the Licensor may, without prejudice to any of its other rights under this Agreement, suspend the delivery of the Data or suspend the Licensee's rights to use the Data under this Agreement, without prejudice to any of its other rights under this Agreement.
- (f) For the purposes of this clause 8, the Licensee will be taken to have satisfactorily implemented a recommendation in the Security Audit Report only if the Licensor's security auditor:
 - (i) so determines; or
 - (ii) determines that other action that the Licensee has taken satisfactorily achieves the same result that the recommended action was meant to achieve.
- (g) Once the Licensee has satisfactorily implemented a recommendation in a Security Audit Report, it must ensure that the recommendation continues to be implemented throughout the Term.
- (h) The Licensee must co-operate with the Licensor and/or the Licensor's security auditor to facilitate any audit that the Licensor is entitled to carry out under this clause 8 or clause 10.

8.3 Licensee acknowledgments

The Licensee acknowledges that:

- (a) any Security Audit is carried out solely for the Licensor's own purposes of determining whether the Licensee has complied with, or remains capable of complying with, its obligations under this Agreement; and
- (b) neither the Security Audit, nor compliance with the recommendations resulting from it, limits or otherwise derogates from any of the Licensee's obligations under this Agreement.

9. Annual Self-Assessment Requirements

- (b) The Self-Assessment Compliance Statement must include the Licensee's assessment of its performance against the criteria determined in writing by the Licensor (at its sole discretion) from time to time, and such criteria must include (unless the Licensor determines otherwise):
 - (i) the Licensee's progress in implementing each recommendation set out in any applicable Security Audit Report;
 - (ii) the Licensee's compliance with the requirements set out in clause 20, including details of any non-compliance with that clause; and
 - (iii) the Licensee's compliance with its obligations in relation to Data protection and privacy, including any such obligations that apply to Derivative Products,

and must be accompanied by a complete list of all Derivative Products which are integrated with the Data and allow users to enquire upon the Data.

9.2 Licensor's rights to terminate

Without limiting the Licensor's rights under clause 17, the Licensor may terminate this Agreement by giving the Licensee written notice to that effect if the Licensee:

- (a) provides an incomplete Self-Assessment Compliance Statement;
- (b) provides a Self-Assessment Compliance Statement that, in the reasonable opinion of the Licensor, contains incorrect or misleading information or assertions; or
- (c) fails to provide a Self-Assessment Compliance Statement within the timeframe set out in this clause, and time is of the essence in this regard,

provided the Licensor has first given the Licensee written notification of the above breach and the Licensee has not remediated that breach within 30 days of receiving that notification.

10. Changes to Derivative Products

10.1 Overview

For the purposes of this clause 10:

- (a) a "Change" in a Derivative Product is deemed to have occurred if:

Derivative Product or increases the risk of the security or the integrity of the Data, or the privacy of any individual to whom any information included in the Data relates, being compromised, violated or otherwise prejudiced (directly or indirectly);

- (iii) if the Derivative Product is internet-based and:

- (A) it is installed on a web site that was not approved by the Licensor in writing for the installation of the Original Version; or
- (B) a change is made to a web site on which it has been installed, which will or may diminish the protection afforded to the security or the integrity of the Data or the privacy of natural persons; and

- (b) a "Minor Change" in a Derivative Product is an upgrade, enhancement or other change to a non-internet-based Derivative Product, which is minor in nature and does not significantly alter the product's functionality, its operation or the manner in which it integrates or uses the Data.

10.2 Licensee warranty

The Licensee warrants to the Licensor that, at the Commencement Date:

- (a) the current versions of the Derivative Products are as set out in Item 7 of the Schedule (each, an "Original Version"); and
- (b) no Change has been made to the Original Version since the Licensor or Government last approved the Licensee's application to obtain access to the Data for the purposes of the Derivative Products.

10.3 Deemed variation

The Licensee acknowledges and agrees that the implementation of any Change in the Derivative Products other than a Minor Change is a variation of this Agreement for the purposes of clause 25.6 and that the Licensee must not implement such Change unless and until the Government has provided its prior written approval in accordance with that clause.

10.4 Changes

- (ii) without derogating from the Licensee's warranty in clause 10.2, the Licensor must give the Licensee notification in writing that it is satisfied that the Change will not cause the Licensee to be in breach of that clause.
- (b) As soon as reasonably possible during the Term before it intends to or after a Minor Change is implemented, the Licensee must notify the Licensor in writing of a Minor Change.
- (c) The Licensor, acting reasonably, may require further information about a Change or any Minor Change in order to satisfy itself of the Licensee's continuing compliance with this Agreement including that any Minor Change is in fact a Minor Change, or require a Security Audit to be performed, at the cost of the Licensee in accordance with clause 8.
- (d) For the purpose of clause 10.4(a), the Licensee must provide the relevant information to the Government, and not the Licensor, for any Change covered by clause 10.1(a)(i).

11. Product Licences

11.1 Termination of Product Licences

- (a) The Licensee must ensure that all Product Licences terminate immediately on the termination of this Agreement.
- (b) If:
 - (i) the Government notifies the Licensee that, in its opinion, it would be contrary to public policy for a particular Product Licence to continue; or
 - (ii) a Customer uses a Derivative Product, or any report or other thing generated by it, for a purpose not permitted by this Agreement, or does anything else not permitted by this Agreement, and the Licensor so directs the Licensee,

the Licensee must immediately terminate or vary the relevant Product Licence to the extent necessary to give effect to any direction or notification provided by

this Agreement, or has done anything else not permitted by this Agreement, the Licensee must immediately notify the Licensor, in writing and in reasonable detail, of the unauthorised use or other act or omission.

12. Royalty

12.1 Royalty

During the Term, the Licensee must pay to the Licensor a royalty of 12.5% of all Commercialisation Revenue earned by the Licensee during each Royalty Calculation Period (**Royalty**).

12.2 Calculation and payment of Royalty

- (a) During the Term, no later than 3 calendar months after the end of each Royalty Calculation Period and in accordance with this clause 12.2, the Licensee must provide to the Licensor:
 - (i) the most recent Published Revenue; and
 - (ii) a statement (certified as true and correct by the company secretary of the Licensee) to the Licensor in respect of that Royalty Calculation Period, even if there is no Royalty payable in respect of the upcoming Royalty Calculation Period, setting out in reasonable detail:
 - (A) the Commercialisation Revenue for that Royalty Calculation Period; and
 - (B) the Royalty payable by the Licensee for the upcoming Royalty Calculation Period,
- (Royalty Information)**.
- (b) For the purposes of the Royalty Payment Period commencing from the Commencement Date, the Licensee must provide no later than 5 Business Days after the Commencement Date the information required in clause 12.2(a).

- (A) the Licensor must as soon as reasonably practicable issue a tax invoice for the first Quarter of the Royalty Payment Period (or part thereof); and
- (B) the Licensor may exercise its rights under clause 12.3.

- (d) Within 30 days of the provision of a valid tax invoice under clause 12.2(c), the Licensee must pay the Royalty in equal instalments each Quarter during a Royalty Payment Period.

12.3 Records and audit

- (a) The Licensee must maintain true and accurate records (including audited balance sheets, profit and loss and cashflow statements, prepared in accordance with generally accepted accounting principles) relating to its use and Commercialisation of the Data including:
 - (i) details of all Product Licences, including expired or terminated ones; and
 - (ii) its compliance with the requirements of this Agreement.
- (b) The Licensor has the right, upon giving not less than 10 Business Day's notice to the Licensee, to commission an Independent Auditor to audit the Licensee's accounts and records pertaining to the Published Revenue or any other matter relating to this Agreement to determine whether the amount of the Royalty for a Royalty Calculation Period has been correctly calculated in accordance with this Agreement (**Audit**).
- (c) The Licensor will have the right to have an Audit conducted under clause 12.3(b) once in respect of each Royalty Calculation Period, provided that this clause 12.3(c) will not limit the Licensor's right to have an Audit conducted at a later time, or to conduct a further Audit if the Licensor becomes aware of, or is provided, new information in respect of a Royalty Calculation Period.
- (d) The Licensee must cooperate with the Independent Auditor and provide all information reasonably required by the Independent Auditor to allow it to undertake and deliver the Audit.

- (ii) if the Audited Royalty is incorrect, set out the amount of the Royalty that should have been paid by the Licensee for the Royalty Calculation Period covered by the Audit (**Revised Royalty**).
- (g) If the Revised Royalty:
 - (i) exceeds the Audited Royalty, the Licensee must, within 14 days of receipt of the Audit Report, pay the difference to the Licensor; or
 - (ii) is less than the Audited Royalty, the Licensor must, within 14 days of receipt of the Audit Report, pay the difference to the Licensee.
- (h) An Audit Report prepared for a Royalty Calculation Period, and the determination of any Revised Royalty amount within that Audit Report, will be final and binding on the parties.
- (i) The costs of the Independent Auditor are to be borne and paid for by the Licensor unless the Independent Auditor determines that the Revised Royalty exceeds the Audited Royalty by 15% or more, in which case the Licensee must pay all costs of the Independent Auditor.

12.4 **Adjustment Mechanism**

- (a) No later than 3 calendar months after the end of the Term, or such later time agreed by the Licensor acting reasonably, the Licensee must provide to the Licensor:
 - (i) the Published Revenue for the Financial Year immediately following the Financial Year used for the Last Royalty Calculation Period (**Revised Published Revenue**); and
 - (ii) a statement (certified as true and correct by the company secretary of the Licensee) to the Licensor in respect of the Last Royalty Calculation Period, even if there is no Royalty payable in respect of the Last Royalty Calculation Period, setting out in reasonable detail:
 - (A) the Commercialisation Revenue and Royalty for the Last Royalty Calculation Period had the Commercialisation Revenue and Royalty been calculated using the Revised Published Revenue; and
 - (B) the Royalty paid or payable by the Licensee for the Last Royalty Calculation Period as calculated under clause 12.2, subject to

- (A) if the Royalty disclosed for the purposes of clause 12.4(a)(ii)(A) is greater than the Royalty disclosed for the purposes of clause 12.4(a)(ii)(B), the Licensee must pay to the Licensor the difference within 30 days of the issue of a valid tax invoice;
- (B) if the Royalty disclosed for the purposes of clause 12.4(a)(ii)(A) is less than the Royalty disclosed for the purposes of clause 12.4(a)(ii)(B), the Licensor must pay to the Licensee the difference within 30 days of the issue of a valid tax invoice; or
- (ii) reject the Final Royalty Information and exercise its rights under clause 12.3 which continue to operate with full force and effect after expiration of the Term for the purposes of auditing the Final Royalty Information.
- (c) The parties agree that this clause 12.4 will not apply if:
 - (i) a new agreement is entered into between the Licensor and the Licensee for the sub-licence of Data; and
 - (ii) both parties have expressly agreed in writing that the royalty adjustment mechanism in the new agreement replaces and has the same effect as the royalty adjustment mechanism set out in this clause 12.4.

13. **GST**

13.1 **Preliminary**

Words or expressions used in this clause that are defined in the GST Act have the same meaning given to them in the GST Act.

13.2 **Consideration does not include GST**

Unless otherwise stated, any consideration specified in this Agreement does not include any amount for GST.

13.3 **Recovery of GST**

If a supply under this Agreement is subject to GST, the recipient of the supply must pay to the supplier an additional amount equal to the amount of consideration multiplied by the applicable GST rate.

13.5 **Adjustment of additional amount**

If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount accordingly.

13.6 **Reimbursement**

If a party is entitled to be reimbursed or indemnified under this Agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

14. **Release and Indemnity**

14.1 **Release**

The Licensee releases the Licensor and the Government, and each of their respective officers, employees and agents in respect of all liability for loss, damage or injury which may be suffered by the Licensee arising from its use of the Data or any Derivative Product except to the extent such loss, damage or injury was caused by the Licensor or the Government.

14.2 **Indemnity**

- (a) The Licensee continually indemnifies the Licensor and the Government, and each of their respective officers, employees and agents (**those indemnified**) from and against any loss, damage or injury (including reasonable legal costs and expenses) howsoever arising that those indemnified may suffer as a result of:
 - (i) the exercise by the Licensee of any rights granted to it in relation to the Data;
 - (ii) any person's use or reliance on the Data, any Derivative Product, or any report or other thing, using the Data or generated by any Derivative Product;
 - (iii) any breach by the Licensee of its obligations under this Agreement;
 - (iv) any wilful, unlawful or negligent act or omission of the Licensee; or

irrespective of the means, manner or nature of any settlement, compromise or determination.

- (c) The Licensor holds on trust for those indemnified the benefit of the releases and indemnities set out in clause 14.2(a).

15. Implied Terms

- (a) Subject to clause 15(b), any condition or warranty which would otherwise be implied in this Agreement is excluded.
- (b) Where legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty is deemed to be included in this Agreement.
- (c) However, if permitted by the relevant legislation, the liability of the Licensor for any breach of such condition or warranty is limited, at the option of the Licensor, to one or more of the following:
 - (i) if the breach relates to goods:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) the payment of the cost of having the goods repaired; and
 - (ii) if the breach relates to services:
 - (A) the supplying of the services again; or
 - (B) the payment of the cost of having the services supplied again.

16. Notification Requirements

and such a notice must include such details of the event as the Licensor may consider sufficient to enable the Licensor to make an informed decision as to whether the Licensee will be able to continue to comply with the terms and conditions of this Agreement.

17. Termination

17.1 Termination for cause

The Licensor may terminate this Agreement by giving the Licensee written notice to that effect if:

- (a) the Licensor's rights to licence the Data to the Licensee are terminated;
- (b) the Licensee is in breach of any term of this Agreement and such breach is not remedied within 30 days of written notification by the Licensor of the breach;
- (c) without derogating from the preceding subclause, the Licensee is in breach of clause 7, in which case the Licensor may not allow the Licensee a period in which to remedy the breach;
- (d) the Licensee becomes the subject of insolvency proceedings;
- (e) the Licensee has breached the same provision of this Agreement on 3 or more occasions, irrespective of whether or not the Licensee has remedied the breaches;
- (f) control of the Licensee (whether by a change in majority shareholding or otherwise) changes whereby control is determined by the capacity to determine the outcome of decisions of the Licensee's financial and operating policies and for the purpose of this clause another entity may control the Licensee even if it does so as trustee; or
- (g) any director, secretary or officer of the Licensee is convicted of a criminal offence and the Licensee fails to remove such person from his or her office immediately after a conviction is made, delivered or recorded.

17.2 Termination by Licensee

- (b) Termination pursuant to this clause does not prejudice any other rights accruing to the Licensor prior to the date of termination, including the right to pursue all remedies available at law or in equity.
- (c) If notice is given by the Licensee pursuant to clause 17.2, the Licensor may:
 - (i) repossess any copies of the Data in the possession, custody or control of the Licensee or any Customer;
 - (ii) retain any moneys paid;
 - (iii) charge a reasonable sum for work performed for the purposes of this Agreement in respect of which work no sum has been previously charged;
 - (iv) be regarded as discharged from any further obligations under this Agreement; and
 - (v) pursue any additional or alternative remedies provided by law.

18. Consequential Loss

- (a) The extent permitted by law, under no circumstances will either party be liable to the other party for any loss of profit, loss of revenue, loss of anticipated savings, loss of contract, loss of business opportunity, loss of reputation or goodwill, loss of data or any special, exemplary, indirect or consequential loss arising in connection with this Agreement.
- (b) Clause 18(a) does not apply to exclude loss which has occurred or is suffered by the Licensee as a result of a breach by the Licensor of clauses 6 or 21 of this Agreement.

19. Force Majeure

- (a) Neither party is liable for any delay in performing, or failure to perform, its obligations pursuant to this Agreement (other than an obligation to pay money). If the delay or failure is due to Force Majeure

20. Licensee's Contractors

20.1 Supply of Data to Contractors

The Licensee may, during the Term, disclose, distribute or supply the Data to a contractor (**Contractor**) engaged by the Licensee to carry out a task for or on behalf of the Licensee for the purposes set out in clauses 3.1(a) or 3.1(b), solely in relation to the Licensee's own Derivative Product, provided:

- (a) the Licensee seeks and obtains the Licensor's consent prior to any disclosure, distribution or supply of the Data to the Contractor;
- (b) the Licensee provides to the Licensor all relevant details of the Contractor to the reasonable satisfaction of the Licensor, including the task to be carried out by the Contractor;
- (c) the Licensee ensures that the Contractor is aware of all the terms of this Agreement relevant to the Contractor;
- (d) the Licensee enters into a contract with the Contractor on terms and conditions which reflect the terms and conditions of this Agreement, and protect the Licensor's rights under this Agreement and in the Data, to the satisfaction of the Licensor;
- (e) the Licensee, if requested by the Licensor, provides the Licensor with a copy of the contract which has, or is proposed to be, entered into with the Contractor;
- (f) the Licensee enforces the obligations in this Agreement between the Licensee and the Contractor; and
- (g) the Licensee immediately advises the Licensor in writing if the Licensee becomes aware that the Contractor has breached any of those obligations.

20.2 Licensee remains responsible

- (a) If the Licensor consents to the disclosure, distribution or supply of the Data to a contractor pursuant to clause 20.1, the Licensee is not relieved of any of its

21. Confidentiality

21.1 Disclosure generally

- (a) Neither party may, without the prior written approval of the other party, disclose the other party's Confidential Information.
- (b) A party does not breach clause 21.1(a) where it is legally compelled to disclose the other party's Confidential Information.

21.2 Disclosure by Licensor

The Licensor does not breach clause 21.1(a) by making a disclosure to the Government, including:

- (a) to Parliament, the Governor, Cabinet; any Minister of the Crown or Parliamentary or cabinet committee or sub-committee; or
- (b) disclosures which must be made by the Licensor to Government as a consequence of the Licensor's contractual obligations to the Government; or
- (c) for the purpose of prosecuting or defending any legal proceedings.

21.3 Use by Licensor

The Licensor must not use any Confidential Information of the Licensee for any purpose other than performing its obligations under this Agreement.

21.4 Disclosure to or by employees, agents and subcontractors

- (a) Each party must take all reasonable steps to ensure that its employees and agents, and any subcontractors engaged for the purposes of this Agreement, do not make public or disclose the other party's Confidential Information.
- (b) The Licensor may at any time require the Licensee to arrange for its employees, agents or sub-contractors engaged in the performance of this Agreement to execute a suitable confidentiality deed. The Licensee must arrange for all such

22. Contract Administration

- (a) For the purposes of administering this Agreement, each party appoints as its Contract Manager (**Contract Manager**), the person so designated in Item 8 of the Schedule.
- (b) The Licensor's Contract Manager and the Licensee's Contract Manager each has authority to:
 - (i) exercise all of the powers and functions of his or her party under this Agreement, other than the power to renew or amend this Agreement; and
 - (ii) bind his or her party in relation to any matter arising out of or in connection with this Agreement.
- (c) The Licensee must comply with all reasonable instructions given by the Licensor's Contract Manager.
- (d) Either party may by 14 days written notice to the other change its Contract Manager.

23. Resolution of Disputes

- (a) Subject to clause 23(b), disputes in relation to this Agreement must be resolved in accordance with this clause before clause 25.8 is triggered.
- (b) Either party may, in a case of genuine urgency, seek immediate interlocutory relief or an interim remedy.
- (c) Subject to clause 23(b), all disputes must be resolved as follows:
 - (i) Each party must within 14 days of the dispute arising, submit the dispute:
 - (A) in the case of the Licensor, to the Contract Manager; and
 - (B) in the case of the Licensee, to the Contract Manager.

- (d) The Executive Negotiators must discuss the dispute as soon as practicable to resolve it, but in any case within 14 days of its reference to them. Each party must authorise and inform its Executive Negotiator sufficiently so that he or she can undertake that discussion without detailed reference to another person.
- (e) Notwithstanding the existence of a dispute each party must continue to perform its obligations under this Agreement.
- (f) This clause survives any expiry or termination of this Agreement.

- (a) the Licensor's fraud, negligence or breach of trust;
- (b) the Licensor having acted beyond power or improperly in relation to the Trust; or
- (c) any act intended to reduce or extinguish the Licensor's indemnification out of the assets of the Trust.

- (i) it has the right to be fully indemnified out of the Trust's assets in relation to the obligations and liabilities incurred by it under this Agreement, that right has not been modified, released or diminished in any way, and the Trust's assets are sufficient to satisfy that right of indemnity and all other obligations and liabilities in respect of which the Licensor has a right to be indemnified out of the Trust's assets; and
- (j) it has not released or disposed of its equitable lien over the Trust's assets.

24. Trustee Capacity

24.1 Trustee Capacity

Subject to clause 24.3:

- (a) the Licensor enters into this Agreement in its capacity as trustee of the Trust and in no other capacity;
- (b) the Licensee will not be entitled to:
 - (i) claim from or commence proceedings against the Licensor in respect of any loss, liability, cost or expense under or in connection with this Agreement in any capacity other than as the trustee of the Trust;
 - (ii) seek to appoint a receiver, liquidator, administrator (or person performing a similar function) or prove in any liquidation, administration or arrangement of or affecting the Licensor; or
 - (iii) enforce or seek to enforce any judgment in respect of a loss, liability, cost or expense under or in connection with this Agreement against the Licensor in any capacity other than as trustee of the Trust; and
- (c) the Licensor's liability (despite any other clause to the contrary) under or in connection with this Agreement is limited to the extent to which the Licensor is entitled to be indemnified for that liability out of assets of the Trust.

24.2 Licensor Acknowledgement

The Licensor acknowledges and agrees that it will exercise its rights of indemnification

24.4 Licensor representations and warranties

The Licensor represents to the Licensee that each of the following statements is correct and not misleading as at the date of this Agreement and will be correct and not misleading as at the Commencement Date:

- (a) the Trust is duly constituted and has not been terminated, nor has the date passed or any event occurred for the vesting of the Trust's assets;
- (b) it is the sole trustee of the Trust, it has not given any notice of resignation and no action has been taken to remove it or to appoint an additional trustee of the Trust;
- (c) the Trust Deed complies with all applicable laws;
- (d) it has complied with its obligations and duties under the Trust Deed and at law;
- (e) no property of the Trust has been re-settled, set aside or transferred to any other trust;
- (f) it has full legal capacity and power under the Trust Deed to:
 - (i) own the Trust's assets and carry on the business of the Trust as it is now being conducted; and
 - (ii) enter into this Agreement and to carry out the transactions that this Agreement contemplates, as trustee of the Trust;
- (g) all action that is necessary or desirable under the Trust Deed or at law has been taken to:
 - (i) authorise entry into this Agreement and the carrying out by the Licensor of the transactions that this Agreement contemplates;

24.5 Relevant definitions

For the purposes of this clause 24:

- (a) **Trust** means the Land Services SA Operating Trust; and
- (b) **Trust Deed** means the deed under which the Licensor is appointed as trustee of the Trust.

25. Miscellaneous

25.1 Assignment

The Licensee must not assign this Agreement or any rights under this Agreement, in whole or in part, without the prior written consent of the Licensor.

25.2 Survival of Agreement

- (a) Subject to any provision to the contrary, this Agreement ensures to the benefit of, and is binding upon, the parties and their successors, trustees, administrators, permitted assigns or receivers, but does not ensure to the benefit of any other persons.
- (b) The terms and conditions of this Agreement that are capable of having effect after the expiration or earlier termination of the Agreement remain in full force and effect following such expiration or earlier termination.

25.3 Status of Licensee

- (a) The Licensee is not a partner or agent of the Licensor and does not have the

25.4 Waiver

- (a) A waiver of any provision of this Agreement must be in writing.
- (b) No forbearance, delay or indulgence by either party in enforcing any provision of this Agreement prejudices or restricts the rights of that party, nor does a waiver of any right operate as a waiver of any subsequent breach.

25.5 Severability

Each provision of this Agreement is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this Agreement in the relevant jurisdiction, but the rest of this Agreement will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

25.6 Variation

- (a) The parties must not vary or purport to vary any provision of this Agreement unless the prior written approval of the Government is obtained.
- (b) If the parties wish to vary this Agreement, the Licensor must seek the approval of the Government by providing full particulars of the proposed variation to the Government.
- (c) Any variation of this Agreement must be in writing, signed by each party to this Agreement and in the form approved by the Government in accordance with clause 25.6(a).

25.7 Governing Law

This Agreement is governed by, and must be construed in accordance with, the laws of the State of South Australia.

25.8 Jurisdiction of Courts

- (a) The courts of South Australia have exclusive jurisdiction to determine any proceeding in relation to this Agreement.

the addresses and numbers of the intended recipient as specified in clause 25.9(c).

- (b) Notice will be effective and be deemed to have been received as follows:
 - (i) if delivered, upon delivery; or
 - (ii) if sent by post, the 2nd business day after posting; or
 - (iii) if sent by facsimile transmission, upon the sender's facsimile machine producing a transmission report that the facsimile has been sent to the recipient's facsimile number.
- (c) The address and facsimile number of a party for the purposes of this clause are as set out in Item 10 of the Schedule.
- (d) A party may modify either its address or facsimile number, from time to time, by a written notice served on the other party.

25.10 Entire Agreement

- (a) No amendment of, or addition to, the provisions of this Agreement is binding unless it is in writing and signed by the parties to the Agreement.
- (b) This Agreement constitutes the complete agreement between the parties and supersedes all previous agreements, understandings and negotiations, written or oral, in respect of the matters dealt with in this Agreement.

25.11 Rights

Any express statement of a right of a party under this Agreement is without prejudice to any other right of that party expressly stated in this Agreement or arising at law or in equity,

Signing page

Executed by LAND SERVICES SA OPERATING PTY LTD ACN 618 229 815 AS TRUSTEE FOR THE LAND SERVICES SA OPERATING TRUST (ABN 86 836 650 939) by its duly appointed attorneys, who by their execution warrant their authority to execute this document:

Signature of attorney

Signature of attorney

Position (print)

Position (print)

Full name (print)

Full name (print)

Executed by [i] in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of Director

Signature of Director/Company Secretary

Full name (print)

Full name (print)

Schedule Details

Item 1	Commencement Date (clause 1.1)	This Agreement commences on the date of its execution by the last of the parties.
Item 2	End Date (clause 1.1)	
Item 3	Extension Term(s) (clause 2.2(a))	Subject to agreement in writing between the parties, the Term of this Agreement may be extended for the following Extension Terms: (a) a period of up to 3 years commencing on the End Date; and (b) a period of up to 3 years commencing on the date of expiry of the preceding Extension Term.
Item 4	Government Statement (clause 1.1)	WARNING <i>The information contained in this dataset is extracted from records of land status and cadastral boundary definition held by the Government of the State of South Australia (the "State"). The information is not represented to be accurate, current, complete, or suitable for any purpose, at the time of its supply by the State, and may have changed since the date of supply by the State.</i> <i>The software by which the information is provided is not represented to be error free.</i> <i>No responsibility is accepted by the State for any reliance</i>

Copyright in the information remains with the Crown in right of the State of South Australia. The information is reproduced under licence from the Crown.

PRIVACY

The information contained in this dataset must not be used for the purposes of compiling contact lists, whether personalised or not.

Item 5	Dataset	<p>1. Content</p> <p>The Data content will comprise, with the exception of those records excluded or limited in this item, the following:</p> <p>(a) data on all property sales recorded by the South Australian Registrar-General, from 1 January 1993 to the Commencement Date, comprising the data attributes set out in Annexure A; and</p> <p>(b) data on each new property sale recorded by or on behalf of the South Australian Registrar-General during the Term, comprising the data attributes set out in Annexure B.</p> <p>2. Data limitations</p> <p>2.1 Prior to registration of the transfer document, an interim sales record will be released in the first available update file. These interim sale records are subject to review and possible change. Without limiting the other provisions of this Agreement, the Licensee is reminded that these records may contain incomplete or incorrect information. After registration of the transfer document, an updated sales record will be released in the first available update file.</p> <p>2.2 In some instances, the sale consideration is not disclosed to the Licensor and in such instances will not</p>
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purpose administrative sale records will not be provided to the Licensee under this Agreement:-

- 4. Format**
The data will be supplied in a compressed file (using a ZIP utility) that contains an ASCII text file with tilde H delimited fields within each record.
- 5. Media for delivery**
Electronic transfer or by such other means as notified by the Licensor to the Licensee.
- 6. Frequency of delivery**
Generally, data is to be updated, by extract on a weekly basis. The extract will generally be run on the weekend, but the day on which the extract is run may vary, depending on system and processing requirements. The Licensor will use reasonable endeavours to notify the Licensee of any delays to delivery of data files.
- 7. Method of delivery**
 - 7.1 Data files will be placed in the Licensee's account on a file server nominated by the Licensor Details to enable connection to the server, including user-code and password, will be provided by the Licensor to the Licensee. Data files will normally be available on the first Business Day after each weekend. The Licensor will use reasonable endeavours to notify the Licensee of any delay in file availability.
 - 7.2 Data files are archived from a Licensee's account after 42 days. It is the Licensee's responsibility to retrieve data files from the server prior to archiving. The Licensor may impose additional charges on the Licensee to replace data files not retrieved by the Licensee prior to archiving.

Item 7 Original Version of Derivative Products See Annexure C

Item 8 Contract Managers (clause 22) The Licensor
Joshua Wilson-Smith, General Counsel

Level 1, 101 Grenfell Street
Adelaide SA 5000

Phone: (08) 8423 5015

The Licensee

[•]

[•]

Phone: [•]

Fax: [•]

Item 9 Executive Negotiators (clause 23) The Licensor
Brenton Pike, Chief Executive Officer

Level 1, 101 Grenfell Street
Adelaide SA 5000

Phone: (08) 8423 5011

The Licensee

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[•]

Phone: [•]

Fax: [•]

The Licensee

[•]

[•]

Fax: [•]

Annexure A Initial Data Attributes

Annexure B Weekly Extract Data Attributes

Annexure C Original Version of Derivative Products