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**THE DISSEMINATION OF GOVERNMENT  
GEOGRAPHIC DATA IN CANADA:  
*GUIDE TO BEST PRACTICES***

2008  
Version 2



## EXECUTIVE SUMMARY

### **A. Background to Version 2 of *The Dissemination of Government Geographic Data in Canada : Guide to Best Practices***

The GeoConnections program (“GeoConnections”) is a national federally-funded program designed to link location-based information using the power of the Internet. To develop, support and deliver the Canadian Geospatial Data Infrastructure, GeoConnections relies strongly on a broad network of partners who are developing the capabilities to disseminate geographic data on-line and to access such data from these partners. An integrated data licensing framework for geographic data is one of the cornerstones for building these capabilities.

In the Winter of 2005, GeoConnections released version 1 of *The Dissemination of Government Geographic Data in Canada : Guide to Best Practices* (“*Guide to Best Practices*”). The culmination of months of effort and consultation led by the Data Licensing Guide Working Group (the “DLGWG”), established under the auspices of the GeoConnections Policy Advisory Node,<sup>1</sup> Version 1 of the *Guide to Best Practices* set out an integrated framework for what was then recommended as constituting the three types of geographic data dissemination and licensing models most commonly used in Canada, to be used for the purposes of licensing government geographic data.

Continuous dialogue with government data licensing practitioners, users and industry highlighted the prevalency of new distribution models for the dissemination of geographic data, made possible through the rapid development and technological advances in the field of web-based services, distributed computing and other user applications. The benefits of these new technological advances on the dissemination of government geographic data, coupled with changes in government data dissemination policy mandated an examination of the currency, relevancy and comprehensiveness of the integrated framework for the licensing of government geographic data as outlined in the first version of the *Guide to Best Practices*.

In the Winter of 2007, the GeoConnections Secretariat revived the DLGWG, enlarged its membership and commenced work on Version 2 of the *Guide to Best Practices*.

### **B. Methodology**

Version 2 of the *Guide to Best Practices* was completed using concurrent, multiple lines of

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<sup>1</sup> A group of individuals working on behalf of the GeoConnections Program to advance discussions on policy related issues.

inquiry involving research and feedback on the currency, relevancy and comprehensiveness of the integrated framework for the licensing of government geographic data, as recommended in the initial *Guide to Best Practices*. These included:

- feedback from licensing practitioners in federal departments and agencies;
- feedback from users of government geographic data and licensing practitioners in provincial and municipal governments;
- feedback from the geomatics industry; and
- review of relevant documents and literature.

Broad-based consultation with government departments and agencies involved in the production, use and/or licensing of government geographic data and the geomatics industry informed and guided the work of the DLGWG and the elaboration and articulation of the integrated framework for the licensing of government geographic data recommended in this Version 2 of the *Guide to Best Practices*.

### **C. Objectives of Version 2 of the *Guide to Best Practices***

This version of the *Guide to Best Practices* complements the initial version through its refinement of the integrated framework for the licensing of government geographic data recommended in 2005. It addresses distribution models that have emerged or increased in prevalence, including:

- web-based distribution models which are appropriate where the stated objective of a dissemination activity is to promote widest use possible of the licensed government geographic data, with no restrictions on further distribution. The *Guide to Best Practices* supports no-fee web-based distribution of government geographic data, provided it is effected within the parameters articulated in the recommended model template No-Fee Unrestricted Use Web-Wrap Licence Agreement.


With respect to web-based distribution on a fee basis, the *Guide to Best Practices* acknowledges the availability, in law, of click-wrap agreements; however, for policy, contract and risk management reasons, it recommends that, in the context of an integrated approach to the licensing of government geographic data, producers of government geographic data wishing to distribute their data on a fee basis refrain from entering into click-wrap agreements. Rather, it is advocated that fee-based licence agreements be entered into using traditional methods; the delivery of the licensed government geographic data may, however, be done electronically, after signature of the applicable fee-based licence agreement.

- the reseller model is appropriate where the stated objective of a dissemination activity is to promote widest use possible of the licensed government geographic data through access to established distribution channels, with constraints on allowed uses so as to ensure the integrity of the licensed government geographic data. The fundamental characteristics of the reseller model are articulated in a model template Reseller Agreement;
- the value-added reseller model, which is appropriate where the stated objective of a dissemination activity is to promote the incorporation of the licensed government geographic data into value-added products and its distribution through established channels. This distribution model, appropriate in certain defined circumstances, is articulated in a model template Value-Added Reseller Agreement;
- no-fee and fee-based distribution models, anchored in the Unrestricted Use Model and in the End-Use Model. The *Guide to Best Practices* presents and discusses how these two models support very distinct dissemination objectives and require specific contractual provisions;
- data sharing between federal departments and agencies, and between federal departments and agencies and other levels of government. Version 2 of the *Guide to Best Practices* explains what type of documents should evidence such data sharing arrangements. It recommends two (2) model template Memoranda of Agreement for use when data is shared between federal departments and suggests the types of contractual vehicles to be used to evidence arrangements between the federal government and other levels of government.

Version 2 of the *Guide to Best Practices* replaces the 2005 version through its treatment of issues that are now at the forefront of matters that are of vivid interest to government data licensing practitioners. For example:

- it addresses new federal data dissemination policy, as well as other overarching governmental policy positions that impact on the dissemination of government geographic data; and
- it discusses how the evolutive and transformative nature of geographic data, compounded with users' technological sophistication and expectations for technology-based data distribution have spurred significant industry activity in a number of areas, including in relation to:
  - metadata and the development by industry of applications assisting in the development of metadata for geographic data;
  - web services; and
  - geographic digital rights management

Version 2 of the *Guide to Best Practices* sets out a revised integrated framework for the



four types of government geographic data licensing models most commonly used in Canada - the unrestricted use model, the end-user model, the reseller model and the value-added reseller model. It provides a rationale for appropriate uses, explains how each model builds on common structures, demonstrates their inter-relationships and provides clear guidance to assist licensing practitioners in selecting the most appropriate model and licence agreement. Recommended approaches to fundamental concepts such as ownership of intellectual property, liability, duration and termination are discussed in detail for the benefit of licensing practitioners, and are guided by data dissemination policy directives currently in force across federal departments and agencies.

## **Acknowledgements**

This version of *The Dissemination of Government Geographic Data in Canada: Guide to Best Practices* is the culmination of extensive discussion within government and with industry on ways to further improve the use and benefit of government geographic data through the refinement of public sector data dissemination objectives and the licensing practices necessary to achieve them.


The GeoConnections Program, and particularly the GeoConnections Policy Advisory Node has supported these discussions since the summer of 2002, first by encouraging the start-up of working groups to discuss and develop a general approach to standard licence agreements; as the work progressed, by supporting the development of a single integrated data licensing framework for use by those involved in the management or licensing of government geographic data, as expressed in Version 1 of the *Guide to Best Practices*; and by supporting the refinement of Version 1 and the release of Version 2.

While many individuals participated in this process, the contributions of several stand out as having provided key input to the discussions. These include:

- members of the Interdepartmental Working Group on Licensing Practices, established under the auspices of the GeoConnections Policy Advisory Node;
- members of the Working Group Data Dissemination and Licensing, formed under the Canadian Council on Geomatics; and
- members of the GeoConnections Policy Advisory Node.

## **To the Reader**

The continued refinement of *The Dissemination of Government Geographic Data in Canada: Guide to Best Practices* is a collaborative process. We rely on the reader's input to suggest progressive improvements to the *Guide to Best Practices* so that it remains a valuable information asset for the geospatial data licensing community. Please use the Feedback Form provided at Appendix I to propose changes for consideration in the preparation of subsequent versions.



The *Guide to Best Practices* is intended to be gender neutral. Any references to a particular gender are intended to and shall be construed as including both the masculine and the feminine genders.

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# CHAPTER 1 INTRODUCTION

## 1.1 Context


Over the last decade, government departments and agencies profound change in the nature and importance of their work. Across all sectors of Canadian involved in the production, use, and dissemination of geographic data have witnessed society, it is becoming increasingly recognized that basic geographic information serves as a direct input to logistics planning, investment decisions, public policy, citizen mobility and awareness, health research, resource management, emergency preparedness, etc. The rapid development and widespread proliferation of distributed computing and the Internet have only increased the demand for access to a variety of geographic data, including geographic data produced by government. User applications are becoming more sophisticated - spanning political jurisdictions, requiring several types of data as input, and accessing data from complex networks of databases.

However, the data dissemination and licensing frameworks used to promote, extend and support the use of government geographic data generally have not kept pace with developments in technical capacity and growing user demands. Many data clients point to the

**Government geographic data serves as an input to informed decision-making across all sectors of Canadian society**

lack of an integrated and consistent framework for the dissemination and licensing of government geographic data as detrimental to the goal of promoting its wider use and benefit. The variety of terms governing use, fee structures, acknowledgment of source and termination clauses used across government makes it difficult to optimize the use of government geographic data. There is some evidence that these conditions are driving potential data clients to duplicate data collection efforts or seek other providers rather than access government data holdings.

The Canadian experience in this domain is not unique, as the shift from analog to digital maintenance and distribution of geographic data is global in scope. Efforts to grapple with these challenges are occurring in several governmental contexts, and there is a growing body of knowledge on how governments can respond. In the United States, the National Research Council's Committee on Licensing Geographic Data and Services carried out a comprehensive review of government geographic data licensing activities. In 2004, "Licensing Geographic Data and Services" was published to serve as a guide for US



government agencies.<sup>1</sup> It included licensing models that meet the spatial-data needs of government and its stakeholders, and made recommendations to government on actions that will balance the interests of all parties affected by licensing of spatial data and services to and from government.

Within the European context, the Global Monitoring of Environment and Security (GMES) initiative aimed at establishing a European capacity for the provision and use of operational information for the monitoring and management of the environment and for civil security. An important part of the GMES effort lay in ensuring that the wide variety of information summarized in the ‘data offer’ can be exploited in a coherent fashion through the use of an effective policy and business framework guiding the progressive build of this infrastructure.<sup>2</sup>

In 2004, the European Communities recommended the creation of Infrastructure for Spatial Information in the European Community (INSPIRE) “to make interoperable spatial information readily available in support of both national and Community policy and to enable the public to access this information.”<sup>3</sup>

In the European Parliament conciliation agreement approving the creation of INSPIRE<sup>4</sup>, financial sustainability of public services providing spatial data was considered. Under the agreement, Member States may allow public authorities which supply spatial data sets to license them to, and/or require payment from, the public authorities or institutions and bodies of the Community" which use them. However, any such charges and licences must be fully compatible with the general aim of facilitating the sharing of spatial data" and must be kept to the minimum required to ensure the necessary quality and supply of spatial data sets and services together with a reasonable return on investment. Moreover, spatial data provided under Community legislation relating to the environment may not be subject to charging.

In recent years in Canada, increasing thought has been given to questions on the overall framework and approach for government involvement in geographic data. Most of these discussions attempt to address how government data dissemination policies can be used to promote social and economic development, democratic values of transparency, citizen engagement, cultural identity and wider knowledge of Canada and its place in the world.

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<sup>1</sup> National Academies Press, 2004, [www.nap.edu/catalog.php?record\\_id=11079](http://www.nap.edu/catalog.php?record_id=11079).

<sup>2</sup> See [www.gmes.info](http://www.gmes.info).

<sup>3</sup> <http://www.ec-gis.org/inspire/proposal/EN.pdf>.

<sup>4</sup> <http://www.europarl.europa.eu/sides/getDoc.do?language=EN&type=IM-PRESS&reference=20070208IPR02885>.

One forum in which such issues have been discussed at length is the GeoConnections Program.<sup>5</sup> This federally funded program has been designed to draw widely from the expertise in the use of geographic data across the country. Its Management Board is comprised of representatives from the federal, provincial/territorial, private sector, non-profit, and academic sectors. The GeoConnections Policy Advisory Node (the “Policy Node”) is a group of individuals working to advance discussions on geomatics policy related issues. In 2001, the Policy Node undertook significant discussion pertaining to the roles of government in geographic data production and dissemination, and commissioned the widely read KPMG Study on Canadian Geospatial Data Policy,<sup>6</sup> producing an action plan on the advancement of policy discussions, and developing a set of guiding principles for the creation, maintenance and distribution of core government geographic data sets.

## **GeoConnections’ response targets and supports the development of an integrated government data dissemination framework**

Government geographic data dissemination and licensing practices have been a common theme in the Policy Node discussions, as collectively, these practices have a significant impact in determining the overall utility of government geographic data sets. Their importance is superseded only by the content specifications, technical standards, and financing/partnership models used to produce the data itself. As a result, the Policy Node began to focus its efforts on data licensing practices. Early efforts concentrated on the evaluation of specific licence agreements. Over time, increasing attention has been given to the development of an integrated data licensing framework suitable for use by government agencies involved in the production, use or dissemination of geographic data.

### **1.2 Communities of Practice in Government Geographic Data Licensing**

From the outset, it has been clear that progress on the development of an integrated framework for the licensing of government geographic data could only be made if the effort were to draw on the advice and support of government professionals involved in this domain. It has always been abundantly evident that the insight of government practitioners on the merits of an integrated framework for the licensing of government geographic data and the content of such a framework should be sought so as to ensure its relevancy,

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<sup>5</sup> See generally [www.geoconnections.org](http://www.geoconnections.org).

<sup>6</sup> KPMG Consulting Inc., *Report on Canadian Geospatial Data Policy*, March 28, 2001, available at [www.geoconnections.org](http://www.geoconnections.org)

usefulness, adoption and use. In the absence of such direct discussions, there would be insufficient support to see the framework evaluated in an objective manner, nor would there be sufficient effort to explore the feasibility of its implementation.

A further rationale for forming a community for discussion on licensing practices is that there is a very ready admission that there is a lot of similarity between the issues faced by licensing practitioners and the approaches used to address them. However, despite the commonality of issues, many feel they are working in a vacuum, unable to gauge the effectiveness of their practices. They feel they have little opportunity to discuss issues and approaches that would benefit their own work while increasing the overall utility of government produced geographic data to users outside their current client base.

At the federal level, a Working Group on Licensing Practices was formed under the Inter-Agency Committee on Geomatics,<sup>7</sup> a group of federal departments and agencies with heavy involvement in the production, use and dissemination of government geographic data. A similar community was also formed at the national level through the Canadian Council on Geomatics<sup>8</sup> (CCOG), a provincial/territorial/federal coordinating body on government geographic data. Together with the support and direction of the GeoConnections Policy Advisory Node, these communities have enabled a broader discussion of data dissemination and licensing practices for the benefit of all participants, and provided the principal input for the material presented in both versions 1 and 2 of the *Dissemination of Government Geographic Data in Canada - Guide to Best Practices* (the “*Guide to Best Practices*”)<sup>9</sup>. Through the use of the integrated framework for the licensing of government geographic data advocated in version 2 of the *Guide to Best Practices* and of the model templates recommended, there is an opportunity for widespread distribution of data originating from previously unavailable government sources – such as data pertaining to Canada’s diverse Aboriginal communities.

### **Communities of practice encouraging and sustaining broad discussion on dissemination policy and practices**

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<sup>7</sup> See <http://www.iacg-cmoig.org>.

<sup>8</sup> See <http://www.ccoq-cocg.ca>.

<sup>9</sup> Version 1 of the *Dissemination of Government Geographic Data in Canada - Guide to Best Practices* was released in Winter 2005.

### **1.3 Objectives of *The Dissemination of Government Geographic Data in Canada - Guide to Best Practices Version 2***

The first version of the *Guide to Best Practices* was released in the Winter of 2005. Its principal objective was to serve as a continually maintained core document detailing progress in the development of an integrated framework for the licensing of government geographic data. It reflected the then current understanding of that framework, issues that needed to be resolved, and provided an assessment of those discussions from the perspectives of the licensing practitioner and data user.

Continuous dialogue with government data licensing practitioners, users and industry revealed some shortfalls with Version 1 of the *Guide to Best Practices*. The prevalence of new distribution models, the impact of technological advances on the dissemination of government geographic data and the evolutionary nature of government data dissemination policy, as well as other overarching government policy positions, precipitated the GeoConnections Secretariat to revive the Data Licensing Guide Working Group and to commence work, in the Winter of 2007, on Version 2 of the *Guide to Best Practices*.

Version 2 of the *Guide to Best Practices* thus builds on its predecessor, augmenting it: 1) by refining the recommended integrated framework for the licensing of government geographic data, addressing distribution models that have emerged or increased in prevalence, and ; 2) through its treatment of issues that are now, in 2008, at the forefront of matters that are of vivid interest to government data licensing practitioners. More specifically, version 2:

- provides a new articulation of the integrated framework for the licensing of government geographic data, drawing upon new and evolving distribution models;
- addresses new data government dissemination policy, as well as other overarching governmental policy positions that impact on the dissemination of government geographic data;
- provides model templates that are consistent with the overall revised integrated framework for the licensing of government geographic data; and
- presents and recommends clear, concise, and commonly used clauses that can be used in licence agreements and memoranda of agreement.

## **CHAPTER 2**

### **GEOGRAPHIC DATA IN SOCIETAL CONTEXT**

#### **2.1 Pervasiveness of Geographic Data in Society**

Geographic data provide the spatial context required to create an comprehensible picture of the physical world and our place in it. Geomatics, the term commonly referenced within the geographic data community, is the integration of the sciences, tools and technologies used to capture, organize, classify, manage, analyze, and disseminate geographic data. Examples of activities within geomatics include surveying, web-based mapping, location-based services, geographic information systems (GIS), global positioning systems (GPS) and earth observation.

Within the resource based sectors, geomatics research has given rise to GIS and GPS technologies which facilitate land use planning, ecosystem management, navigational and logistics systems development, and environmental monitoring, ocean governance and surveillance, business efficiencies, etc. The agricultural sector employs GPS technologies for the optimization of fertilizer and pesticide spraying, as well as crop mapping to ensure better crop yields and more appropriate soil management. In mining, geomatics is being used to assess environmental damage and create strategies to deal with the issue of acid mine drainage.

Increasingly however, geographic data and geomatics innovation are being applied to decision-making across a broader range of activities. For example, geographic data are now prevalent on government web sites for communicating information on services such as the location and dates of garbage collection, transit routes, public events, location of public and private facilities, libraries, child care services, etc.

In the private sector, geographic data are becoming widely used to support investment decisions, delivery logistics, and marketing. In recent years, increased attention has been paid to the development of web-mapping capacity, location-based service support direct to individual consumers, vehicle routing and emergency location, etc. Much use is made of the inherent capacity of geographic data to serve as an integrator of diverse data sets in order to create greater potential for decision-making.

## **2.2 Socio-Economic Benefits of Government Geographic Data<sup>11</sup>**

Government geographic data has, through its various applications and transmutations, assumed a prominent role in government business. Increased Web accessibility of this data is modernizing how Canadians conduct their affairs with government and how environmental, agricultural and emergency services are delivered to them. With geographic data now recognized as an asset that can be used to inform decisions, corporate approaches are evolving to the data that will maximize business efficiencies and facilitate its use in government decision-making.

Socio-economic benefits materialize when geographic data is used for the following purposes:

- to support federal government policies, programs and services;
- to support other government policies, programs and services; and
- to foster economic growth.

### **2.2.1 Geographic Data Used to Support Federal Government Policies, Programs and Services**

Geographic data informs and supports federal government policies, programs and services in a number of areas, for example: the preservation and management of natural resources, water quality and quantity, wetlands, air quality, marine environment and forest ecosystems. Delivery of public services, civil protection, military operations and international aid also rely on geographic data.

Geographic data is part of the core business of a number of federal departments and agencies. Some federal departments and agencies that rely on and/or generate and distribute geographic data include:

- Agriculture and Agri-Food Canada - National Land and Water Information Service, National Agri-environmental Health Analysis and Reporting Project
- Department of National Defence - Military Planning and Operations
- Elections Canada – Election Planning and Management

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<sup>11</sup> Source: <http://www.nrcan.gc.ca/statistics/geomatics/default.html>.




- Environment Canada – Canadian Ice Service, Meteorological Service of Canada, Environmental Emergencies Mapping Program, Climate Change Variability and Extremes, ResEau, Ontario Region’s Information System for the Environment
- Fisheries and Oceans Canada - GeoPortal, St. Lawrence Observatory, Canadian Hydrographic Service, Canadian Coast Guard
- Health Canada
- Indian and Northern Affairs Canada
- Natural Resources Canada - National Atlas of Canada, National Forest Information System, GeoGratis, Earth Observation Data Services, Canadian Geoscience Knowledge Network
- Parks Canada
- Public Safety Canada – Emergency Preparedness and Response Coordination
- Public Works and Government Services Canada
- Royal Canadian Mounted Police
- Statistics Canada – Population Census, Census of Agriculture, Canadian Environmental Sustainability Indicators

### **2.2.2 Geographic Data Used to Support Other Government Policies, Programs and Services**

Cost savings, increased benefits and efficiency gains result from the coordination of data procurements and development between the federal and provincial governments. For instance, in 2007, AAFC purchased SPOT hi-res mosaics for Prairie agricultural areas. The same data set is supporting multiple government activities, such as the Crop Cover Protection Program, Species at Risk, Protected Areas assessments, permanence of deforestation assessments, and planning and conducting of military training operations.

Federal, provincial and territorial governments are also collaborating on a five-year, \$2.4-million project to add new national medium resolution satellite imagery to GeoBase. Because the new, high-quality satellite images of Canada’s entire landmass will be publicly available at no cost, they will support both government and private sector decision makers. For example, the data could be used for mapping and monitoring Canadian wetland areas, natural resources management, exploration, 911 service and emergency response.

Evidence of the socio-economic benefits of geographic data can also be drawn from a variety of provincial- and territorial-led initiatives to coordinate procurement and development of geographic data, e.g. Ontario Geospatial Data Exchange, Manitoba Land Initiative, GeoNova, Saskatchewan Geospatial Imagery Collaborative. Each initiative aims to share and make geographic data accessible to provincial organizations. Some provincial



initiatives have other participants such as other levels of government, First Nations communities, non-government organizations, academic institutions. The data is collected, maintained, and distributed to accepted standards and shared according to a common licence agreement. Among the benefits described by these initiatives are increased alignment to strategic government goals and plans, harmonization of geographic data among participants, facilitation of collaborative business models, new and enhanced service delivery via the Internet or Intranet, fostering of economic growth, high benefit to cost ratios, and reduction of duplication of effort.

### **2.2.3 Geographic Data Used to Foster Economic Growth**

Geographic data, by inviting transformative applications, has stimulated the rapid development of innovative products, fuelled the development and advancement of the geomatics sector of Canadian industry and increased research and development (“R&D”) opportunities.

A Census Survey of the Canadian Geomatics Industry conducted in 2004 by Statistics Canada on behalf of Natural Resources Canada/Earth Science Sector (the “Survey”) found that there are about 2,221 geomatics establishments in Canada, mainly located in Alberta, Ontario, Quebec, and B.C. Most geomatics firms are small with 97% having less than 100 employees.

The Survey also noted that the industry is experiencing healthy double digit growth rates. In 2004, revenue reached \$2.8 billion, with most of the revenue attributed to geomatics firms in Alberta representing 38% of total revenue, followed by Ontario (32%), BC (14%), and Quebec (11%). These four provinces accounted for 95% of industry revenue.

Almost 400 Canadian geomatics firms export, totalling \$442 million in 2004. The US was the main destination of geomatics exports with \$169 million (38% of total); followed by South America (20% of total); and Europe (13% of total). The direct contribution to the Canadian economy by the Geomatics Industry was about \$2 billion in 2004.

Total R&D expenditure on geomatics activities reached \$97 million in 2004. Companies in Ontario devoted the most to R&D activities, followed by BC, Quebec and Alberta. Most of the funding for R&D came from parent, affiliated or subsidiary firms and was carried out in-house.

As articulated in the Government of Canada's 2002 Innovation Agenda<sup>12</sup>, its 2007 Science and Technology Strategy<sup>13</sup> and Speeches from the Throne<sup>14</sup>, access to government information, including geographic data, is crucial in fostering learning and cultural awareness, citizen engagement in democratic processes, and in bolstering economic growth and job creation by spurring innovation.

## **2.3 New Developments to Support Geographic Data Dissemination**

The evolutive and transformative nature of geographic data, compounded with users' technological sophistication and expectations for technology-based data distribution have spurred significant industry activity in a number of areas, including in relation to:

- metadata and the development by industry of applications assisting in the development of metadata for geographic data;
- web services; and
- geographic digital rights management (geoDRM)

### **2.3.1 Metadata**

Metadata is commonly known as "data about data and services". It is the data describing context, content and structure of records and their management through time.

Metadata is information about the data and services. It describes the data including details about data ownership, quality, time of collection or update, attribute information and how it can be accessed and obtained. Metadata is essential for understanding the data product and knowing its purpose or limitations.


Technology is advancing quickly and vast amounts of data are collected, therefore metadata becomes even more essential in order to help organize the data so that it can be accessed, evaluated, utilized and stored appropriately. The importance of metadata is often overlooked as producing and managing it does require time and effort. However without metadata, data products and services have much less value to others. To ensure consistency, metadata can be defined by standards that offer a common set of terms, definitions and organization.

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<sup>12</sup> See <http://www.innovationstrategy.gc.ca/gol/innovation/site.nsf/en/in04135.html>

<sup>13</sup> See [http://www.ic.gc.ca/epic/site/ic1.nsf/en/h\\_00231e.html](http://www.ic.gc.ca/epic/site/ic1.nsf/en/h_00231e.html)

<sup>14</sup> See, for example, <http://www.sft-ddt.gc.ca/eng/media.asp?id=1364>;  
<http://www.innovationstrategy.gc.ca/gol/innovation/site.nsf/en/in05197.html>



This type of information can be compiled for many products in the geospatial context. With a data product such as digital satellite imagery, where the digital satellite image is the data, the metadata is the descriptive text or values, which outline the characteristic properties of the image such as satellite name and number, date and time of image acquisition, geographical location of the image, applied processing details and distributor.

### ***Importance of Metadata***

Metadata is the vital foundation for data management and for understanding, collaborating and sharing resources with others.

Metadata benefits data-producing organizations by ensuring that data holdings are well documented over time, so their value for the data custodian and user is maintained.

Metadata also benefits users by providing them with a complete description and history of the data product or service. In this way, it is a vital tool to evaluate the effectiveness and the limitations of using a data product or service for particular purpose. Structured and complete metadata enables the user to seek entries in a spatial data clearinghouse that have specific parameters (for example, specific latitude and longitude positions) and discovers resources that are specific to the user's needs.

### ***Costs of Metadata***

There is an initial cost associated with generating and documenting information about data which is defined by the time and effort required to do so. However, there are a number of things that can help to effectively and efficiently produce metadata, including: planning on including metadata and allowing time to do so, starting at the beginning of a project, using a recognized standard that is well documented, and educating all participants on the benefits of metadata. The initial expense of documenting data is less than the potential costs of duplicated or redundant data generation. The costs of not creating metadata include potential loss of information through staff changes, data redundancy, data conflicts, liability, misapplications, and most importantly, decisions based on poorly documented data.

When essential information is missing or is not documented adequately, the value of the data to others is severely reduced, and may lead users to question the accuracy and reliability of the information thereby reducing its usefulness. Lack of confidence in information can tarnish the results of any subsequent analysis of the data. Properly written metadata can help avoid confusion and uncertainty.

### *Web-Based Data Dissemination Considerations*

With online data distribution through web services and even more with cascading web services, the importance of keeping metadata with the data itself increases dramatically. In some cases, much of the metadata and information about the quality or usability of the data have not been transferred with the data product or service or have not been read by the user. This is of increasing concern, as there may be limitations to the data and suggestions of use for the data that the user is not aware of. With the use of web services, there is a greater responsibility on the user's part, to take the initiative to understand the terms and conditions and any licensing requirements of the data set.

End users must also take responsibility by educating themselves with the terms and conditions of data use (even in an unrestricted use licence) to minimize the risk of data being used incorrectly or without proper permissions. Different metadata are produced 1) for describing the data, 2) for describing web services that provide access to the data, and 3) for describing applications that incorporate the data. Through cascading of web services, the user may not know where the data is coming from. For example, client application A may access data provided as a web service X from client application B that accesses and integrates data from web services Y and Z (see figure 1 below).

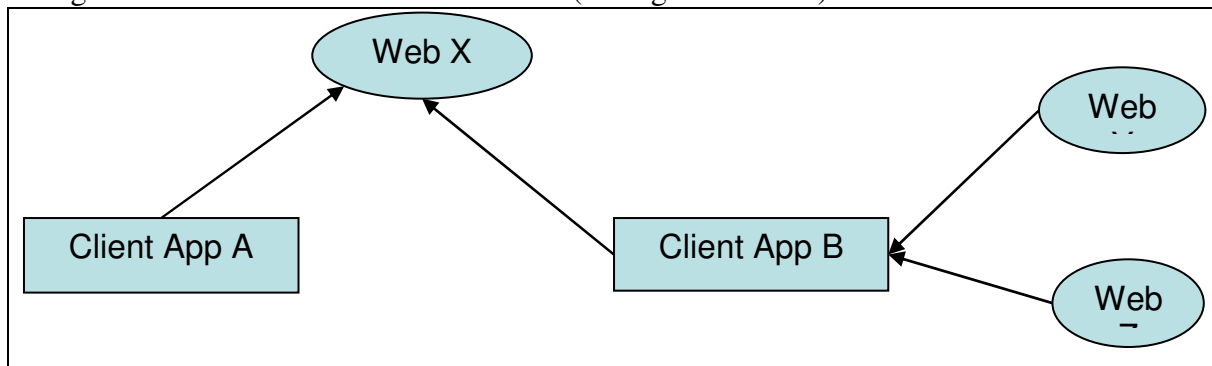



Figure 1: Cascading Web Services

Data products are packaged with metadata, a licence agreement and associated documentation when they are made available for downloading. The publisher may also choose to make the metadata, the licence agreement and the associated documentation available for viewing on-line.

The publisher of a web service providing access to data is responsible for ensuring easy access to the data set's metadata and the terms and conditions of use. The metadata describing the web service does not have the same information in it that the metadata for the data set itself contains. It does include a link to the web page where users can access



the data set and its metadata. Also from that page, the publisher may a) access the licence agreement and require the user to physically accept the terms and conditions of the licence agreement before accessing the data; or b) post a statement indicating that use of the service implies acceptance of the licence agreement and atypically a button on the left or top, labelled “Terms and Conditions of Use” allows the user to read it.

The publisher of web applications and tools is responsible for ensuring that the terms and conditions attaching to the use that may be made of the data are being met, e.g., appropriate acknowledgement of data sources. Near the bottom of the map, the publisher may provide a link labeled “About this map” leading to a page that describes data sources and provides access to metadata for data used by the application. Links to metadata may also be provided by data layer where the user selects what layers will be displayed. Information about the data used in an application is part of the metadata describing the application.

### *Metadata Standards*

A geospatial metadata content standard describes a common and structured set of metadata items with definitions that describe geospatial data. Conforming to a standard is important to ensure that everyone can find, understand and share data by finding and comparing common details of the data. A metadata standard outlines the characteristic properties to be recorded, as well as the values the properties should have. Such standardization of the vocabulary makes information sharing more reliable and universal.

The CGDI endorses two metadata content standards. First, the United States' Federal Geographic Data Committee (FGDC) Content Standards for Digital Geospatial Metadata (CSDGM) were chosen for their quality, popularity of use, established support, as well as for the tools that have been and are continuing to be created.<sup>15</sup>

As well, the recent International Organization for Standardization (ISO) Standard for Geographic Information - Metadata (ISO 19115:2003) was chosen for its capabilities for internationalization. ISO 19115 is a newer standard that has more configurability to application communities and supports internationalism in terms of languages and character sets.

Canada and the United States of America are working to finalize a profile of the international standard, ISO19115:2003, called the North American Profile of

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<sup>15</sup> See <http://www.fgdc.gov/metadata/geospatial-metadata-standards>.

ISO19115:2003. This profile targets the specific metadata needs of the two countries in terms of items to describe, coded values and support of multiple languages. This will serve better the sharing of geospatial data in North America and world-wide.<sup>16</sup>

In order to allow federal departments to include standardized metadata as part of their business processes, a submission, led by GeoConnections, was made to Treasury Board on Metadata Standards for Geospatial Data (TBITS 40). The standard includes a comprehensive set of metadata terms and definitions that describe digital geospatial data and outlines the characteristic properties of the data to be recorded, as well as the values each property should have.<sup>17</sup>

### ***Metadata Tools***

Currently there are a number of sites available to provide tools to assist in developing metadata. One of note is: <http://www.fgdc.gov/metadata/geospatial-metadata-tools>. It is expected that tools consistent with the soon to be released North American Profile of ISO19115:2003 will be developed.

### ***Additional Information And Web Links***

Additional resources, such as the CGDI online training manual and the Guide to Best Practices to the Canadian Geospatial Data Infrastructure are available on the GeoConnections website [www.geoconnections.org/publications/Technical\\_manual/](http://www.geoconnections.org/publications/Technical_manual/) and [www.geoconnections.org/publications/training\\_manual/](http://www.geoconnections.org/publications/training_manual/).

### **2.3.2 Web Services**

A web service is "a software system designed to support interoperable machine to machine interaction over a network. Web services are frequently web Application Programming Interfaces (APIs) that can be accessed over a network, such as the Internet, and executed on a remote system hosting the requested services."<sup>18</sup> Geographic-centric web services are those that include the hosting, accessing, discovering or publishing and displaying of location-based information.


### ***Benefits Of Web Services***

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<sup>16</sup> [http://www.iso.org/iso/iso\\_catalogue/catalogue\\_tc/catalogue\\_detail.htm?csnumber=26020](http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=26020)

<sup>17</sup> [http://www.tbs-sct.gc.ca/its-nit/standards/tbits39/crit39\\_e.asp](http://www.tbs-sct.gc.ca/its-nit/standards/tbits39/crit39_e.asp). TB 40 is to be published.

<sup>18</sup> Source: Wikipedia, 2007.



Web services allow greater flexibility in terms of access, searching and sharing data as it occurs over the Internet than through traditional paper channels. Web services nominally use standards which allow any application or computer platform to participate, regardless of software and hardware. Data providers can publish using web service specifications, users can consume data and services regardless of formats and applications, and multiple data sets can be integrated directly through the web into applications. Adhering to recognized standards and specifications in developing web services is critical to the power of interoperability.

The costs of storing, updating and managing the data are born primarily by the data providers and publishers. New business models are beginning to evolve that will allow those costs to be shared. [www.GeoBase.ca](http://www.GeoBase.ca) is an example of the horizontal collaboration among federal departments, provinces and territories towards the building of framework data sets by focusing on the collection of data closest to source and making it accessible for use by many.

### ***Types Of Web Services***

There are a number of web services specifications and standards approved by organizations such as the Open Geomatics Consortium (OGC) and International Standards Organization (ISO/TC211) which are endorsed by the Canadian Geospatial Data Infrastructure (CGDI). Current geographic-centric web services endorsed by CGDI are Web Map Service (WMS), Web Feature Service (WFS), and Web Coverage Service (WCS). Web Map Service (WMS 1.1.1 & 1.3)/ISO 19128:2005) can generate a rendered map, service basic queries about the content of the map and let the client know what maps can be produced and queried. Web Feature Service (WFS 1.0 & 1.1) supports the retrieval, editing and manipulation of individual geo-spatial features and their properties. Web Coverage Service (WCS 1.1) provides delivery of data coverage, such as matrix data.

### ***Web Services and Data Dissemination***

Many federal government departments are looking to web services to disseminate their geographic data to the user community, as there is an increased demand for web-based data transactions. Most traditional methods of digital data transfer (FTP, CDs and downloads) do not meet the requirements of their clients and are no longer the most efficient way of delivering data.

Web services now allow client applications to access specific data on an “as needed basis”, thereby ensuring the user receives the most recent data, and is not burdened with storing entire data sets. Users also benefit as they can produce maps or perform analysis using data



from multiple sources in an integrated manner without having to deal with formats and exchanges.

On-line licences and agreements are being developed to try to keep up with this new way to disseminate data; however there are many considerations and work that need to be done. In most cases, technology is developing more rapidly than security and intellectual property issues can be properly addressed, and as a result formal policies are not yet in place to handle web-based data transactions. Furthermore, agencies need to review and confirm data content, data structure, standards, scale of data, format, etc. in order to support the technology before making data sets available. Therefore currently only a small number of government agencies have employed web-based services to serve their geographic data.

### ***Additional Information***

- GeoConnections Developers' Guide to Best Practices to the CGDI  
[http://www.geoconnections.org/publications/Technical\\_Manual/html\\_e/cgdiindex.html](http://www.geoconnections.org/publications/Technical_Manual/html_e/cgdiindex.html)
- CGDI On-Line Training  
[http://www.geoconnections.org/publications/training\\_manual/e/](http://www.geoconnections.org/publications/training_manual/e/)
- CGDI Technical Manual  
[http://www.geoconnections.org/publications/Technical\\_Manual/html\\_e/cgdiindex.html](http://www.geoconnections.org/publications/Technical_Manual/html_e/cgdiindex.html)

### **2.3.3 Geospatial Digital Rights Management**

#### ***Digital Rights Management (DRM)***


Microsoft defines Digital Rights Management (DRM) as: *Any technology used to protect the interests of owners of content and services (such as copyright owners). Typically, authorized recipients or users must acquire a licence in order to consume the protected material—files, music, movies—according to the rights or business rules set by the content owner.*<sup>19</sup>

The Canadian Internet Policy and Public Interest Clinic of the University of Ottawa also refers to DRM as “electronic copyright management systems” or ECMS, noting they are technologies designed to manage rights related to information.<sup>20</sup>

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<sup>19</sup> See <http://www.microsoft.com/security/glossary.aspx#d>.

<sup>20</sup> [http://www.cippic.ca/en/faqs-resources/digital-rights-management/#faq\\_what-is-drm](http://www.cippic.ca/en/faqs-resources/digital-rights-management/#faq_what-is-drm).



DRM enables owners of content to have control over their copyrighted works. The information technology industry has developed a number of DRM technical specifications for protecting intellectual property, especially for the audio and video industries, which are plagued by unauthorized copying and use of their products. DRM for geomatics data (GeoDRM) poses specific challenges due to the nature of the data.

There are several efforts underway by various groups to develop GeoDRM related specifications and tools. A few are listed below. Due to the rapid evolution of these technologies the reader is cautioned to consult authoritative websites for the most recent information on GeoDRM.

### *Examples of Geospatial Digital Rights Management*

- *Open Geospatial Consortium Inc.*

In the Geospatial industry, GeoDRM standards and specifications are being developed by the Open Geospatial Consortium<sup>21</sup> (“OGC”), a non-profit, international, voluntary consensus standards organization leading the development of standards for geospatial and location based services.

In March, 2007, OGC approved the Geospatial Digital Rights Management Reference Model (GeoDRM RM), an abstract specification for the management of digital rights in the area of geospatial data and services. As explained on the OGC website,<sup>22</sup>

[t]he goal of the GeoDRM effort in the OGC is to make sure that a larger market has access to geospatial resources through a well understood and common mechanism that enables more than today's "all or nothing" protection. A major motivation for this effort is the need to manage the "ownership obstacle to data sharing" in spatial data infrastructure scenarios.

The GeoDRM RM defines the framework for web service mechanisms and rights languages to articulate, manage and protect the rights of all participants in the geographic information marketplace, including the owners of intellectual property and the users who wish to use it. A key aspect of the GeoDRM Reference Model is that it is abstract, or general, rather than specifying implementation details about types of agreements. Such

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<sup>21</sup> Source: OGC Website <http://www.opengeospatial.org/OCG> Geospatial Digital Rights Reference model <http://www.opengeospatial.org/standards/as/geodrmrm>.

<sup>22</sup> Source : <http://www.opengeospatial.org/standards/as/geodrmrm>

agreements might range from an open content sharing model to a cost-recovery program of a public or government organization or a full commercial vendor licence model.

To develop the standards and specifications for GeoDRM, the OGC has initiated the Geo Rights Management Working Group.”<sup>23</sup> A comprehensive description of efforts underway through the OGC to develop GeoDRM specifications is provided on the OGC website.

- ***U. S. Federal Geographic Data Committee***

A 2006 joint report on GeoDRM by the FDGC, the GeoData Alliance, and the Open Geospatial Consortium Inc. can be accessed at the following web site:

<http://www.fgdc.gov/grants/2003CAP/FinalReports/151-03-2-VA-FinalReport.pdf>

- ***International Level***

Mohamed Bishr, of the Institute for Geoinformatics, University of Munster, Germany, along with Andreas Wytzisk and Javier Morales, both of the International Institute for Geo-Information Science and Earth Observation, Enschede, Netherlands co-authored a paper titled *DRM: Towards Digital Management of Intellectual Property Rights for Spatial Data Infrastructures*,<sup>24</sup> in which they observed as follows:

For management of digital licensing, more advanced architectures have been recommended. We follow the digital licensing infrastructure model of Thompson and Jena (2005). The digital licensing infrastructure enables machines to negotiate and issue licenses to protect assets and to regulate how assets and licenses are sold or used. The infrastructure also enables asset holders to track and monitor compliance with terms and conditions of use. The components of the digital licensing infrastructure are described in the context of the GeoDRM architecture below. This digital licensing infrastructure is designed to manage licensing of content and services in a variety of settings. We believe that GeoDRM would require such complex licensing capability.

We have established that the GeoDRM architecture for digital licensing should not be fundamentally different from that of other DRM, since digital licences are what is

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<sup>23</sup> Source: <http://www.opengeospatial.org/projects/groups/geormwg>.

<sup>24</sup> Source: <http://gsdidocs.org/gsdiconf/GSDI-9/papers/TS8.4paper.pdf>.



being managed. Although geospatial licences would differ to a degree from other types of digital licences, from a broad perspective the differences between the two architectures will likely be minimal. Hence, by building on existing DRM technology, we leverage DRM into GeoDRM by creating a GeoDRM architecture for digital licensing of geospatial data sets.<sup>25</sup>

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<sup>25</sup> Source: <http://gsdidocs.org/gsdiconf/GSDI-9/papers/TS8.4paper.pdf>.



## **CHAPTER 3**

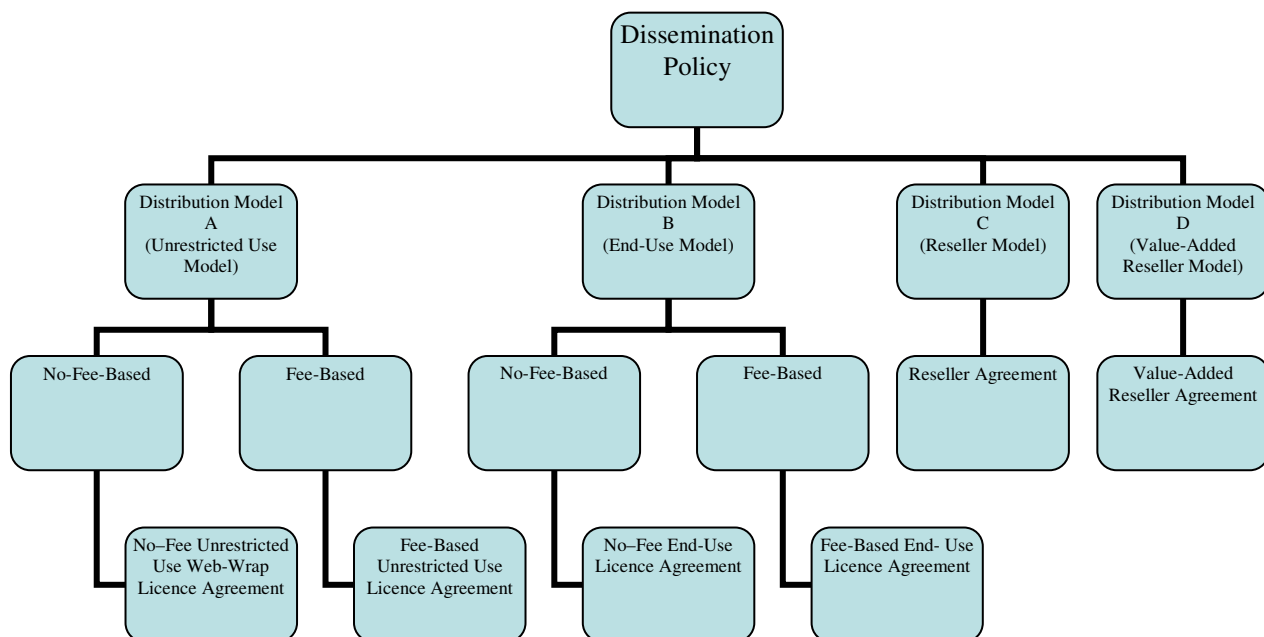
### **INTEGRATED FRAMEWORK FOR THE LICENSING OF GOVERNMENT GEOGRAPHIC DATA**

#### **3.1 Dissemination of Government Geographic Data**

The dissemination of government geographic data is profoundly rooted in government overarching policy objectives of access to government information. It is an intrinsic and vital element of a modern, representative government in an innovation-driven economy.

Government geographic data dissemination policy upholds and sustains key strategic governmental orientations. Manifested through various departmental initiatives, government geographic data dissemination policy plays a significant role in support of the attainment of government objectives and in the fulfillment of legislative mandates. Distribution models are developed to realize the objectives of government geographic data dissemination policy, and licence agreements are entered into to crystallize the fundamental premises of the distribution models and to evidence the creation of a legal relationship in a legally binding instrument.

The illustration below depicts the interplay between dissemination policy pertaining to government geographic data, distribution models utilized by federal government departments and agencies in support of government-wide and departmental dissemination policy and ultimately the licence agreement.



### 3.2 Integrated Framework at a Glance

The central contribution of the *Guide to Best Practices* is the formulation of an integrated framework for the dissemination of government geographic data, taking into consideration the four most commonly used approaches to the licensing of government geographic data, as illustrated above: the unrestricted use model, the end-use model, the reseller model and the value-added reseller model. Within this framework, each distribution model is seen as a single tool within a toolbox. Each tool can be used to perform specific functions, but several tools are required to construct a complete and effective data dissemination strategy for federal departments and agencies producing or distributing a variety of data to clients with different needs. The integrated framework ensures that each model:

- is consistent with current government policy on data dissemination
- provides a rationale for appropriate uses
- shares the same approaches to fundamental concepts wherever possible; and
- employs the same components and clauses in the expression of licence agreements.

The Data Licensing Guide Working Group, established under the auspices of the GeoConnections Policy Advisory Note, refined the four distribution models for the dissemination of government geographic data, illustrated above, and developed standard licence agreements in support of each of these distribution models. This initiative was

driven by the recognition that current government geographic data distribution models need to be simplified to achieve more effective, efficient and equitable access to and delivery of government-produced or held geographic data.

The key characteristics of the licence agreements that have been developed in support of the four (4) distribution models for the dissemination of government geographic data are presented in the table below.

### Key Characteristics of Model Licence Agreements

	<b>Primary Dissemination Objectives</b>	<b>Restrictions on Use of the Data</b>	<b>Downstream Data Distribution</b>	<b>Value-Added/ Derived Products Development</b>	<b>Positive Aspects ----- Negative Aspects</b>
<b>No-Fee Unrestricted Use Web-Wrap Licence Agreement (Appendix A)</b>	<p>Promote the widest public use and private benefit of the data, at no cost to the Licensee</p> <p>Promote wide recognition of government as source of the data</p> <p>Solicit interest in other gvt data sets</p>	No restrictions	<p>Permitted</p> <p>Licensees' licences with 3<sup>rd</sup> parties must contain same terms as those contained in Canada's licence agreement with Licensee</p>	<p>Permitted</p> <p>Right to create and market Value-Added Products (products developed by Licensee by deriving, developing, adapting, incorporating, etc. or simply using the data)</p>	<p><b>POSITIVE</b></p> <p>Ease of administration</p> <p>Strong public support</p> <p>Good public relations -----</p> <p><b>NEGATIVE</b></p> <p>Reduced control over the use of the data</p> <p>Reduced control over the number and/or type of users</p>
<b>Fee-Based Unrestricted Use Licence Agreement (Appendix B)</b>	<p>Promote the widest public use and private benefit of the data, on a fee basis</p> <p>Promote wide recognition of government as source of the data</p> <p>Solicit interest in other gvt data sets</p>	No restrictions	<p>Permitted</p> <p>Licensee's licences with 3<sup>rd</sup> parties must contain same terms as those contained in Canada's licence agreement with Licensee.</p>	<p>Permitted</p> <p>Right to create and market Value-Added Products (products developed by Licensee by deriving, developing, adapting, incorporating, etc. or simply using the data)</p>	<p><b>POSITIVE</b></p> <p>Ease of administration</p> <p>Strong public support</p> <p>Good public relations</p> <p>Predictable impact on cost recovery -----</p> <p><b>NEGATIVE</b></p> <p>Reduced control over the use of the data</p> <p>Reduced control over the number and/or type of users</p>
<b>No-Fee End-Use Restricted Licence Agreement (Appendix C)</b>	<p>Promote use of data, at no cost to the Licensee, while retaining control on the number and/or type of users</p> <p>Promote wide recognition of gvt as source of the data</p>	<p>No redistribution of the data</p> <p>Rights to the data restricted to Licensee's own internal use</p>	<p>Prohibited</p>	<p>Permitted</p> <p>Right to create Derived Products (products developed by Licensee that interpret the data, <u>but do not incorporate it</u>)</p>	<p><b>POSITIVE</b></p> <p>Effective control of number/type of users -----</p> <p><b>NEGATIVE</b></p> <p>Potential inhibitor of wider use of data</p>

	<b>Primary Dissemination Objectives</b>	<b>Restrictions on Use of the Data</b>	<b>Downstream Data Distribution</b>	<b>Value-Added/ Derived Products Development</b>	<b>Positive Aspects ----- Negative Aspects</b>
<b>Fee-Based End-Use Restricted Licence Agreement (Appendix D)</b>	<p>Promote use of data while retaining control on the number and/or type of users, on a fee basis</p> <p>Promote wide recognition of govt as source of the data</p>	<p>No redistribution of the data</p> <p>Rights to the data restricted to Licensee's own internal use</p>	Prohibited	<p>Permitted</p> <p>Right to create Derived Products (products developed by Licensee that interpret the data, <u>but do not incorporate it</u>)</p>	<p><b>POSITIVE</b></p> <p>Effective control of number/type of users</p> <p>Predictable impact on cost recovery</p> <p>-----</p> <p><b>NEGATIVE</b></p> <p>Admin. overhead</p> <p>Potential inhibitor of wider use of data</p>
<b>Reseller Agreement (Appendix E)</b>	<p>Promote wider use of data through access to established distribution channels</p> <p>Promote wide recognition of government as source of the data</p>	<p>No modification or alteration to the data allowed, except to perform minimal utility reformatting, for convenience of client delivery only</p>	<p>Permitted, on an end-use basis only.</p> <p>Reseller's licences with 3<sup>rd</sup> parties must be on an end-use basis and contain prescribed terms set out in Canada's agreement with Reseller</p>	Prohibited	<p><b>POSITIVE</b></p> <p>Access to reseller's distribution channels</p> <p>Greater potential for cost recovery</p> <p>Predictable impact on cost recovery</p> <p>-----</p> <p><b>NEGATIVE</b></p> <p>Admin. overhead</p> <p>Reduced control over use of data</p> <p>Reduced control over the number and/or type of users</p>
<b>Value-Added Reseller Agreement (Appendix F)</b>	<p>Promote wider use of data through value added products</p> <p>Promote wide recognition of government as source of the data</p> <p>Promote innovation</p>	No restrictions	<p>Permitted, on an end-use basis only</p> <p>Reseller's licences with 3<sup>rd</sup> parties must be on an end-use basis and contain prescribed terms set out in Canada's agreement with Reseller.</p>	<p>Permitted</p> <p>Includes the right to create VAR Products (products developed by the VAR reseller by deriving, developing, adapting, incorporating, etc. or simply using the data)</p>	<p><b>POSITIVE</b></p> <p>Greater potential for cost recovery</p> <p>Predictable impact on cost recovery</p> <p>Promotes innovation</p> <p>-----</p> <p><b>NEGATIVE</b></p> <p>Admin. overhead</p> <p>Reduced control over use of data</p> <p>Reduced control over the number and/or type of users</p>



### 3.2.1 Unrestricted Use Model

The first model, expressed in what is commonly referred to as an unrestricted use licence agreement, promotes wide use and re-use of the licensed government geographic data. It contains few restrictions on how the licensed government geographic data may be used and allows for further distribution, thereby supporting the development by private sector firms of location-based services and products based on licensed government geographic data. Downstream distribution of the licensed government geographic data may occur through various means, including by system integrators, original equipment manufacturer and resellers for distribution to end-users.

This model should be used where the stated objective of the geographic data producing department or agency is to promote the widest possible use and further distribution of the licensed government geographic data. Accordingly, the model

**An unrestricted use licence agreement promotes wide use and further distribution of government geographic data**

templates provided appendices A and B to the *Guide to Best Practices* - the No-Fee Unrestricted Use Web Wrap Licence Agreement (Appendix A) and the Fee-Based Unrestricted Use Licence Agreement (Appendix B) contain only those requirements considered as being consistent with the objectives of the unrestricted use model, being:

- widest use and distribution of the licensed government geographic data;
- indemnification and control of liability;
- promotion of intellectual property development by the licensee; and
- acknowledgement of source and incorporation of government-furnished metadata in downstream distribution or applications containing any of the licensed government geographic data.

The policy objective of wide access and distribution of the licensed government geographic data does not preclude cost recovery measures. Depending on the dissemination policy and other imperatives it supports, the unrestricted use model is sufficiently flexible to allow producers of government geographic data to license particular data sets under this model, on a fee or no-fee basis. Given that a fee-based licence agreement will necessarily contain provisions not found in a no-fee licence agreement (e.g. payment obligations), the *Guide to Best Practices* presents both a model template No-Fee Unrestricted Use Web Wrap Licence Agreement and a model template Fee-Based Unrestricted Use Licence Agreement.

While similarities are apparent between the Unrestricted Use Model and the Value-Added Reseller Model (discussed at section 3.2.4 below), the two models support different policy dissemination objectives, as illustrated in the table found in section 3.2 above.

### **3.2.1.1 Model Template Agreements**

#### **No-Fee Unrestricted Use Web Wrap Licence Agreement**

A model template No-Fee Unrestricted Use Web Wrap Licence Agreement is provided at Appendix A of this *Guide to Best Practices*, to be used where the primary dissemination objective for a particular type of government geographic data is to promote, on a no-fee basis, the widest public use of the licensed government geographic data with as little restrictions on use as possible. It is termed a “Web Wrap” licence agreement as it is an agreement to abide by certain terms, acceptance of which is signified by the user by downloading, accessing or using the data to which the licence agreement applies. There is no need for the user to communicate his/her consent by clicking on an “I agree” button; the mere act of downloading, accessing or using the data is deemed acceptance and communication of acceptance by the user to be legally bound by the terms of the licence agreement.

The model template No-Fee Unrestricted Use Web Wrap Licence Agreement found at Appendix A differs slightly from the other model templates recommended in this *Guide to Best Practices*, given the intrinsic characteristics of the dissemination model it supports. For instance, the absence of royalties flowing back to the Crown under this dissemination model makes it unnecessary to provide for payment and reporting obligations.

In order to facilitate the electronic dissemination of government geographic data under the unrestricted model, and to ensure, to the extent possible, the validity and enforceability of the model template No-Fee Unrestricted Use Web Wrap Licence Agreement, a cautionary notice is provided at the beginning of the agreement. Some provisions contained in other model templates recommended in this *Guide to Best Practices* are not contained in the No-Fee Unrestricted Use Web Wrap Licence Agreement. See section 5.3 below for a discussion on electronic contracting.

#### **Fee-Based Unrestricted Use Licence Agreement**

Reproduced at Appendix B of this *Guide to Best Practices* is the model template Fee-Based Unrestricted Use Licence Agreement, to be used where the primary dissemination objective for a particular type of government geographic data is to promote, on a fee basis, the widest public use of the licensed government geographic data with as little restrictions on use as possible. Given the requirement to track payment of fees payable under this model and other contract management imperatives, such agreements ought not be concluded electronically.

### **3.2.1.2 Case Scenarios**

Below are examples of situations where adoption of the unrestricted use model by a producer of government geographic data would be appropriate.

## Scenario 1

*Fast Transport Inc.* is a business operating in the ‘on time delivery’ environment and requires updated, accurate GIS road network data for intelligent management of their fleet. *Fast Transport Inc.* is interested in accessing, reproducing and incorporating into its own products the National Road Network (NRN) vector product available from the GeoBase web site.

The NRN data is made available to *Fast Transport Inc.* under an unrestricted use licence agreement, allowing *Fast Transport Inc.* to use, reproduce, incorporate, sublicense (with further right of sublicensing), modify, improve, further develop, and distribute the NRN data; and to manufacture and / or distribute value-added products. *Fast Transport Inc.* may then download the NRN from the GeoBase web site and augment it with in-house information to create a customized internal product. All company vehicles are using this customized internal product (which contains the NRN data) for ‘day to day’ routing and planning using GPS technology. As required under the terms of the unrestricted use licence agreement, *Fast Transport Inc.* identifies GeoBase® as a data source where any of the NRN data is redistributed or contained within *Fast Transport Inc.*’s value-added products.

## Scenario 2

*Canoe Association Limited* regroups a number of canoe associations for all of Canada and offers base maps to its subscribers. Members of *Canoe Association Limited* can visualize maps produced by *Canoe Association Limited* through WMS and download them from *Canoe Association Limited*’s web site for printing.

Topographical raster data is needed to populate *Canoe Association Limited*’s map database, which also incorporates canoe association information. *Canoe Association Limited* is interested in, and obtains topographical raster data from the GeoGratis web site, pursuant to the terms of an unrestricted use licence agreement, allowing *Canoe Association Limited* to use, reproduce, incorporate, sublicense (with further right of sublicensing), modify, improve, further develop, and distribute the licensed topographical raster data; and to manufacture and/or distribute value-added products. As required under the licence agreement, *Canoe Association Limited* identifies the source of the topographical raster data obtained from the GeoGratis web site whenever such data is redistributed or contained within *Canoe Association Limited*’s products.

## Scenario 3

Geography students from ‘AAA’ University need to use GIS topographical data offered by GeoGratis in support of various research projects. The targeted topographical digital data is offered under an unrestricted use licence agreement, allowing licensees to use, reproduce, incorporate, sublicense (with further right of sublicensing), modify, improve, further develop, and distribute the licensed data; and to manufacture and / or distribute value-added products. The final research reports may be published, printed

or presented to the public, in concordance with the terms of the unrestricted use licence agreement.

### **3.2.2 End-Use Model**

The second distribution model provides for a more restricted grant of rights, with no rights to redistribute. Terms and conditions governing this model are contained in an end-user licence agreement.

The end-use model is appropriate in instances where the producer of government geographic data wishes to grant access to its data while retaining control over the number of users and the manner in which it is used. It allows users to access government geographic data and use it to create innovative solutions, products or services, in a way, however, that does not jeopardize the integrity of the government's geographic data, or allow its further distribution.

**An end-user licence agreement supports accessibility to government geographic licence, with restrictions on redistribution**

The end-use model is appropriate where the stated objective of the government geographic data agency is to promote wide use of its data while retaining control over redistribution, through a mechanism that also supports:

- certainty of the source of the licensed data;
- cost-recovery;
- acknowledgement of source and incorporation of government-furnished metadata in allowed reproductions;
- confidentiality or security concerns;
- control over the type and number of users; and/or
- control over redistribution and use of the licensed data.

The core objective of the end-user model is to allow use of government geographic data, while preventing downstream distribution.

#### **3.2.2.1 Model Template Agreements**

##### **No-Fee End-Use Restricted Licence Agreement**

A model template No-Fee End-User Licence Agreement is provided at Appendix C to this *Guide to Best Practices*, to be used where the primary dissemination objective for a particular type of government geographic data is to support accessibility to government geographic data, on a no-fee basis, with however restrictions on redistribution.

##### **Fee-Based End-Use Restricted Licence Agreement**

In some instances, a producer of government geographic data may wish to disseminate data on an end-use, fee-based basis. A model template Fee-Based End-Use Restricted Licence Agreement can be found at Appendix D, to be used in such circumstances.

### **3.2.2.2 Case Scenarios**

The following scenarios are illustrative of instances where a data dissemination initiative may be supported by the end-use model.

#### ***Scenario 1***

An urban geography professor at the University of Eastern Ontario recently purchased the Road Network Files (RNF) for Ottawa, Montréal and Toronto. The RNF are made available under an end-use licence agreement, allowing licensees to use, reproduce, modify, translate and further develop the RNF, for the licensee's own internal use; and as is necessary for the manufacture and distribution of derived products, provided such derived products do not incorporate the licensed data, in whole or in part.

The professor uses the RNF in conjunction with the University's geographic information system to generate student handouts for a course on urban transportation, and also for materials presented at an upcoming national conference. While the professor is using the RNF to create additional products, he may not extract the RNF from the handouts or conference presentation for use in applications external to the University.

#### ***Scenario 2***

A small home-based marketing and communications firm has recently been awarded a contract to undertake client profiles for a chain of women's clothing stores.

The firm acquired the 1996 Postal Code Conversion File (PCCF) and Census profiles, made available under an end-use licence agreement, allowing licensees to use, reproduce, modify, translate and further develop the RNF, for the licensee's own internal use; and as is necessary for the manufacture and distribution of derived products, provided such derived products do not incorporate the licensed data, in whole or in part.

The firm uses the PCCF and the Census profiles to create products that, among other things, permit linkages to be made between postal codes from various store records and associated socio-economic data. Such products, however, cannot contain any of the PCCF or Census profile data, in whole or in part. At the request of the chain management, client profiles for over 500 stores across the country are prepared which illustrate age, income and other variables of people living in the areas in which each store's clients live, in tabular format

#### ***Scenario 3***

A municipal office wants to evaluate the potential impacts of residential development in areas surrounding a town. The planning consultant hired by the municipality acquires end-user licences for government geospatial data on risk for soil erosion and natural hazards, population changes in the past ten years, land use, average value of existing residences and roads. The planner interprets these data and derives a map to illustrate potential impacts of development and cost estimates of development. The municipality can distribute the derived maps to residents and the general public, but not the original data used to develop them.

### **3.2.3 Reseller Model**

In general, creators of government geographic data are not sufficiently resourced to actively engage in the effective and vigorous promotion, marketing and ultimate distribution of their data. In order to effect the wider use and benefit of such data, relationships can be struck with entities whose strengths often lie in their capacity to develop and target markets of interest to producers of government geographic data, to integrate government geographic data and/or services into products with greater market demand, and to capitalize on this demand through wider distribution channels.

The third distribution model, the Reseller Model, recognizes the significant role played by industry resellers in supporting and facilitating the dissemination and licensing of government geographic data. The Reseller Model is appropriate where the stated dissemination objective of the producer of government geographic data is to enhance dissemination opportunities and to promote wide use of its data through established distribution channels and through a mechanism that also supports:

- enhanced ease of access to government geographic data;
- increased capacity for revenue generation;
- control over the chain of distribution of the licensed data; and
- acknowledgement of source and incorporation of Crown-furnished metadata.

A reseller is an entity or individual that delivers government geographic data. While at times it may perform basic utility formatting or standardized processes to the licensed government geographic data, as part of a client delivery, the reseller does not, as a matter of practice, deploy significant intellectual effort in transforming the licensed government geographic data.

For example, a reseller may select and duplicate from a government-produced data set specific records, which it then distributes to end-users; and provide minimal utility reformatting of files, for convenience of delivery. A reseller would not, however, make changes, fixes or updates to the government geographic data or engage in the development of new products based on the licensed government data.

Some typical activities that may be undertaken by a reseller are listed below:

- may duplicate original government data files for further distribution;
- may provide minimum utility formatting of files, i.e. DBF, XLT, MapInfo, for convenience of delivery; or
- may provide, along with the licensed government geographic data, a separately licensed utility software product like a data viewer or browser that is with or without analytical capability.

A reseller would not, however:

- make changes to the values of the licensed government geographic data, or updates or fixes to the licensed government geographic data; or
- engage in the development of new products based on the licensed government geographic data, but may repackage the licensed government geographic data to support client needs.

Under the Reseller Model, a producer of government geographic data enters into an agreement with an entity (reseller) for the further distribution of its geographic data, or that to which the government department or agency has licensed rights. The agreement clearly states that the reseller shall have no right to transform, alter or otherwise modify the licensed government geographic data, except to the extent required to perform minimal utility reformatting, for convenience of client delivery only, and as may otherwise be provided in the agreement. The producer of the government geographic data provides the geographic data to the reseller on an “as is” basis, with no representations or warranties as to its accuracy, completeness, usefulness, etc. The agreement between the reseller and the producer of government geographic data allows the reseller to license the government geographic data to third parties, on an end-use basis only and on the same terms as those prescribed in the reseller agreement between the government and the reseller, i.e. without any representation or warranties as to the accuracy, completeness, usefulness, etc. of the licensed data. Distribution downstream by the reseller's end-users is expressly prohibited under this distribution model.

The Reseller Model, characterized by a single distribution source, strengthens the capacity of the producer of government geographic data to monitor downstream licences and assess revenue potential.

### **3.2.3.1 Model Template Agreement**

A model template Reseller Agreement is provided at Appendix E to this *Guide to Best Practices*, to be used where the stated dissemination objective of the producer of government geographic data is to promote wide use of government geographic data through access to established distribution models, with proper attribution to government as the source of the data.



### **3.2.3.2 Case Scenarios**

The following cases illustrate situations where the Reseller Model would be used as the dissemination vehicle of government geographic data:

#### ***Scenario 1***

A demographic firm located in the U.S., has developed an Excel-based software tool that allows users to view socio-demographic changes between censuses taken in several countries including Canada and the U.K. Marketed towards independent researchers and analysts in the private sector, the tool allows users to view and manipulate all census data collected from the mid-1950's to the present. No special interface, encoding or encryption is used to prevent access to the data, which can readily be used in other applications. This firm is acting as an Reseller since no restrictions are placed on the user's ability to access or use the government data for other purposes.

#### ***Scenario 2***

A small independent business has developed a computer-based tool for facility planners associated with the food services industry. The software generates a cartographic representation of the anticipated area for recommended fast-food establishments in the form of a .GIF image. This image illustrates thematically the various socio-demographic characteristics of the areas surrounding a recommended fast-food establishment. These images are intended to be used during public consultation sessions, and also used as part of the formal circulations to relevant review agencies (i.e., school boards, provincial ministries, etc.). The interface is simple, and allows facility planners to identify potential locations and produce an annotated .GIF image with very little effort. However, the government data upon which the .GIF image has been prepared can also be easily extracted for use in other applications once the product has been installed. The developer has prevented a user from accessing the government data directly from the installation CD-ROM, but no such safeguards prevent the data from being used after the software is installed on a computer system.

As a Reseller, the software developer would not be required to forward any portion of the revenues generated by sale of the computer-based tool back to government; however, a wholesale fee would be charged each time all or part of any government data files are sold. The developer would also be required to deliver the government end-use licence agreements alongside the government data.

### **3.2.4 Value-Added Reseller Model**

The value-added reseller model (the "VAR Model") allows the value-added reseller (the "VAR") to develop and distribute products and services that incorporate the licensed government geographic data, thus enhancing its market penetration, user uptake and revenue generation potential.



A VAR may, under this distribution model, add value to government geographic data:

- by deploying significant intellectual input to modify the original government geographic data for a particular purpose or application;
- by increasing the level of functionality associated with the original government geographic data, through enhancements, for example, to user interface, using proprietary information technology systems;
- by adapting the original government geographic data and juxtaposing it or incorporating it with other data (including proprietary intellectual property) to create new products, processes or services; and
- by amalgamating various sources of data, including the original government geographic data, into a new working environment with clear purposes, solutions or tools that go beyond the simple delivery of data and which are clearly recognized by clients as valued over simple delivery.

The VAR Model differs from the Reseller Model in that the latter consists only of data delivery; whereas the VAR Model facilitates the development by industry of products and services that integrate, are derived from or otherwise use the licensed government data, and the commercialization of such products and services.

This said, the VAR Model does share many similarities with the Reseller Model. It allows for distribution by the VAR of the licensed government geographic data, on an end-use, "as is" basis only, with no representations or warranties as to the accuracy, completeness, usefulness, of the licensed government geographic data.

That said, the VAR Model and the Reseller Model support different policy dissemination objectives, as illustrated in the table found under section 3.2.

#### **3.2.4.1 Model Template Agreement**

A model template Value-Added Reseller Model is provided at Appendix F to this *Guide to Best Practices*. Is it to be used where the stated dissemination objective of a producer of government geographic data is the promotion of wide use of the government geographic data through access to value-added products, developed or manufactured by value-added resellers by constructing, deriving, developing, adapting, incorporating or by any other means using the licensed government geographic data.

#### **3.2.4.2 Case Scenarios**

The following scenarios are illustrative of a data dissemination initiative which may be supported through arrangements with a value-added reseller.

### *Scenario 1*

A corporation has developed a CD-ROM based marketing tool that will be purchased by real estate firms across Canada. The CD-ROM tool allows the real estate firms to scrutinize socio-demographic data from government that has been aggregated at the neighbourhood or community level. The CD-ROM tool is designed to facilitate responses to common questions from potential home buyers concerning the characteristics of neighbourhoods. The CD-ROM tool qualifies as a value-added product as it was developed by adapting the original government geographic data and juxtaposing it or incorporating it with other data (which may include proprietary intellectual property) to create the CD-ROM tool. The VAR's End Use Licence Agreement does not allow the real estate firms to further redistribute the original government data.

### *Scenario 2*

A company specializing in marketing services purchases government data through a VAR licence agreement, to develop a web application that permits the searching of relevant records within postal codes for use in specific marketing campaigns. The company's web application is developed through the aggregation and amalgamation of the government with other data. The web application therefore qualifies as a value-added product.

## **3.3 Data Use Arrangements Between Federal Departments/Agencies**

Federal government departments and agencies routinely enter into arrangements between themselves governing collaboration on matters of mutual concern or interest. Such arrangements are described in informal agreements, known variously as “gentlemen’s agreements”, “handshake agreements”, memoranda of understanding (“MOUs”) or memoranda of agreement (“MOAs”). The terms MOUs and MOAs are used interchangeably in the Government of Canada context. For the sake of simplicity, the latter term (MOA) will be used in this *Guide to Best Practices*.

“MOA” is the general term used to refer to an agreement that is not intended to have any legal effect. It is the preferred vehicle to evidence arrangements between federal departments and agencies<sup>26</sup> to exchange information, cooperate or coordinate programs to optimize the benefits from each department’s efforts.

A MOA, as opposed to a legally binding agreement (such as the model template licences, the model reseller agreement and the value-added reseller agreement) only describes general cooperation procedures. A MOA:

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<sup>26</sup> They are agreements which, by their very nature, are generally not capable of being legally binding - the Crown cannot agree with itself, nor can the Crown sue itself.

- is not a detailed working document;
- does not provide authority to enter into legally binding agreements (e.g., contracts or inter-agency agreements);
- is not to be used as the basis for justifying a contractual or other binding obligation.

MOAs should be used to evidence data sharing arrangements between federal departments and agencies. Basic elements of MOAs pertaining to the sharing of government geographic data include the following:

- **Heading.** Such as:

MEMORANDUM OF AGREEMENT  
BETWEEN  
NATURAL RESOURCES CANADA  
AND  
FISHERIES AND OCEANS CANADA

- **Background.** This section cites background information that led to the development of the MOA and how it supports the activities of the respective federal departments or agencies.
- **Responsibilities.** This section identifies the roles and responsibilities of the federal departments or agencies. It should clearly set out the actions the parties have agreed to take.
- **Intellectual Property Rights.** This section confirms the custodial responsibilities of the federal departments or agencies in the data they exchange under the aegis of the MOA, and provides for the allocation of intellectual property rights and the custodial responsibilities in products developed by one of the participating departments or agencies as a result of its use, analysis or interpretation of the other's data.
- **Permitted Uses.** This section lists what a department or agency is authorized to do with the other's data.
- **Restrictions On Use.** This section lists any restrictions on uses that may be made of the data exchanged pursuant to this MOA (for example, restrictions on further distribution).
- **Financial Arrangements.** All matters of a financial nature are dealt with in this section.
- **Term.** This section deals with the effective date of the MOA, as well as its duration and termination.

- **Amendment.** This section explains that the MOA may only be amended with the concurrence of both parties.
- **Liability.** This section confirms that each party takes responsibility for damages arising out of its negligence.
- **Dispute Resolution.** The MOA specifies how disputes among the parties are to be resolved.
- **Non-Exclusivity And Non-Binding.** This section confirms that either party may enter into a similar arrangement with other parties; and confirms the intention of the parties that the MOA be non-binding.

### **3.3.1 Model Template Memoranda of Agreement**

#### **Unrestricted Use Memorandum of Agreement**

A model template MOA, containing no restrictions on the uses that may be made by the receiving department of the other department's data, is provided at Appendix G to this *Guide to Best Practices*.

#### **End Use Memorandum of Agreement**

There may be instances where a federal department or agency having the administration and control of some data sets may wish to share them with another federal department or agency, with restrictions, however, on further distribution or on use, or with specific requirements for data protection.

A model template End Use MOA is provided at Appendix H to this *Guide to Best Practices*, to be used in such instances.

### **3.4 Data Use Arrangements Between Federal Departments/Agencies and Other Levels of Government**

Federal producers of government geographic data also enter into data use arrangements with other levels of government.

Such arrangements should be evidenced by a legally binding licence agreement, such as those advocated in this *Guide to Best Practices* and reproduced in the appendices.

The dissemination objective underpinning the arrangements will dictate which of the recommended templates is most suitable. As such, where the stated objective of a data use arrangement between a federal department or agency and another level of government is to promote wide use and further distribution of the federal government geographic data, the no-fee, or fee-based unrestricted use licence agreement template

(Appendices A and B respectively) may be used. If, however, the purpose of the data sharing initiative is to support accessibility to the federal government geographic data while restraining its further distribution, the no-fee, or fee-based end-use licence agreement (Appendices C and D respectively) may be more appropriate.

### **3.5 Other Distribution Models**

Adoption of one of the distribution models recommended in this *Guide to Best Practices* (i.e., the Unrestricted Use Model, the End-Use Restricted Model, the Reseller Model and the Value-Added Reseller Model) should, in most cases, suffice to meet the needs and support the policy objective of the producer of government geographic data. However, it may be that some specificities attaching to a particular government geographic data set, or that the rationale behind a particular distribution vehicle, cannot be satisfactorily met by the recommended distribution models.

Users wishing more information on other distribution models should contact the GeoConnections Secretariat at:

GeoConnections Program

615 Booth Street

Ottawa ON K1A 0E9

Tel: 613-992-0461

1-877-221-6213

Fax: 613-947-2410

[info@geoconnections.org](mailto:info@geoconnections.org)

<http://www.geoconnections.org/en/contact.html>

## CHAPTER 4

# OVERVIEW OF THE GOVERNMENT OF CANADA GEOGRAPHIC DATA DISSEMINATION ENVIRONMENT

### 4.1 Federal Frameworks on Dissemination

The federal government has established statutory and policy frameworks supporting the overarching objectives of citizen engagement, citizen empowerment and promotion of economic growth and job creation through innovation.

#### 4.1.1 Federal Statutory Framework

Statutes that generally influence dissemination of government geographic data include:

■ the **Access to Information Act**, which provides a right of access to information in records under the control of a government institution. In accordance with the principles that government information should be available to the public, necessary exceptions to the right of access should be limited and specific and exceptions to the release of information under the control of government institutions should be reviewed independently of government. Pursuant to the Act and interpretative consideration given to it,

- information contained in government data sets which meets the definition of a 'record' is subject to the provisions of the *Access to Information Act*. A 'record' is defined in the *Access to Information Act* as 'any documentary material, regardless of medium or form';
- database information available to the public, whether in paper form or electronically, is considered published and is thus excluded from the provision of the Act; and
- electronic dissemination initiatives are means of making information readily available via desirable informal means.

Accessibility to information under the control of government institutions is not restrained by the imposition of user fees. Fees may properly be imposed, subject to compliance with enabling statutes, the *User Fees Act* and various other statutes and policies.

■ the **Copyright Act**, which stipulates that copyright to any work (term which encompasses original geographic data sets) prepared:

- by employees of the government in the course of their employment; or
- under the direction or control of the government

belongs to the government, subject to an agreement with the author to the contrary. The government, as owner of the copyright in the work, has the exclusive right to use the work in any manner and to grant rights to the work to private and public users/organizations.

■ the **Emergency Preparedness Act**, which establishes the Government of Canada's responsibilities in emergency situations and provides a mandate for all federal departments and agencies to develop programs to deal with unforeseen and potentially disastrous events.

Key elements of the Emergency Preparedness Act include:

- establishing the emergency preparedness responsibilities of all federal ministers in their respective areas of accountability;
- recognizing the interests of the provinces and territories in relation to federal assistance provided during a provincial emergency;
- providing the legal basis for the Governor in Council to declare a provincial emergency to be of concern to the federal government, and to provide financial and other assistance requested by the affected province(s)

■ the **Financial Administration Act**, providing the overall statutory framework for government financial transactions including those related to information dissemination.

Legal authority to impose fees for access to government databases can be derived from the general provisions of section 19 of the *Financial Administration Act*, dealing with services and the use of facilities. It must be noted however that section 19 applies only where the fees and charges do not exceed the cost to the department of providing the information or related services. Where fees and charges exceed the cost of providing the service, specific authority by the government (i.e., a Cabinet Directive) may be required.

Beyond the *Financial Administration Act*, fees may be prescribed under the department's or program's constituting legislation, or pursuant to each Minister's inherent authority to enter into contracts. See also the *User Fees Act*, discussed below.

■ the **Library and Archives of Canada Act**, which, among other things, provides direction as to the destruction and disposal of government or ministerial records.

- the **Official Languages Act**, which:
  - likens published data sets to any other publications, requiring dissemination in both official languages; and
  - includes provisions related to the presentation of the information on screens and paper reports.
  
- the **Privacy Act**, which aims at protecting the privacy of individuals with respect to personal information about themselves held by a government institution and which provides individuals with a right of access to that information.
  
- the **User Fees Act**, which requires federal departments, before fixing or increasing external user fees or before expanding the application of or increasing the duration of user fees, to:
  - consult stakeholders;
  - establish standards comparable to those established by other countries with which a comparison is relevant;
  - establish an independent advisory panel to report recommendation for resolving complaints on the recommended user fees; and
  - table, through their responsible Minister, a user fee proposal in each House of Parliament.

The *User Fees Act* applies only to fees, charges or levies fixed pursuant to the authority of an act of Parliament. Fees set as a result of the exercise of a Minister's inherent authority to contract do not trigger the *User Fees Act*.

■ **Other Statutes:** Departmental statutes may contain specific direction and authority for disseminating information. In some cases, specific references to information products in specific media (paper) are made. In other cases, the references are more generic as they relate to information products and services and the medium of distribution.

#### **4.1.2 Federal Policy Framework**

The administrative framework governing the dissemination of Government geographic data is also composed of a plethora of policies and directives emanating from central agencies and individual geographic data producing departments and agencies. Those directed by Treasury Board include the following (non-exhaustive list):



■ **Access to Information Policy**, which aims at ensuring effective and consistent administration of the Access to Information Act and Regulations on a government-wide basis. The Access to Information Policy articulates the policy of the Government to carry out the spirit and requirements of the Access to Information Act in a manner which:

- recognizes the duty to inform as the essential principle underlying the access legislation;
- discloses to requesters the maximum information possible which is not injurious to the public and private interests identified in the exemptions in the legislation and does so in the most timely and consistent manner given the nature and scope of the request;
- facilitates effective use of the Act by people with sensory disabilities;
- ensures that responses are coordinated across institutions and that adequate consultation takes place, particularly when the subject is interdepartmental in scope, or involves major legal or policy issues;
- ensures that fees permitted under the Act and Regulations for the provision of information are assessed on the basis of direct costs for processing requests, except in those limited circumstances where waiver of such fees in the public interest may apply.

■ **Communications Policy of the Government of Canada**, which articulates government policy that:

- information services must be managed in a citizen-centered and client-focused manner that achieves results for Canadians;
- timely and convenient access to government information and services must be available to all;
- information for public use must be disseminated or readily available in all regions of Canada, using all practical forms of media;
- information in all formats must be well-identified as being from the Government of Canada according to the requirements of the Federal Identity Program;
- institutions must invest in communications technology which achieves efficiencies in the preparation, accessibility and dissemination of information; and

- institutions must facilitate public access to government information holdings, irrespective of publishing medium.

The Communications Policy of the Government of Canada also provides that particular information must be provided free of charge, such as information that:

- is needed by individuals to make use of a service or program for which they are eligible;
- explains the rights, entitlements and obligations of individuals;
- consists of personal information requested by the individual to who it concerns;
- informs the public about dangers or risks to health, safety or the environment;
- is required for public understanding of a major new priority, law, policy, program or service; or
- is requested under the Access to Information Act and fees are waived at the discretion of the head of the institution,

Publications that do not meet those requirements may be priced.

■ **Directive on Information Management Roles and Responsibilities**, which identifies the roles and responsibilities of all departmental employees in supporting the deputy head in the effective management of information in their department.

■ **Directive on the Use of Official Languages in Electronic Communications**, which requires that institutions respect their linguistic obligations regarding communications with and services to the public, as well as language of work, when it uses electronic communications

■ **Directive on the Use of Official Languages on Web Sites**, which requires government institutions to respect their linguistic obligations when they use a Web site to communicate with and to serve the public.

■ **Enhancing Services through the Innovative Use of Information and Technology**, which

- reiterates the significant role of Government as an information-intensive service provider; and
- highlights the linkages and interdependencies between innovative use of information and technology in the delivery of Government products, services and information and excellence of service and client-service orientation.

■ **Federal Identity Program**, the Government of Canada's corporate identity program. It helps project the government as a coherent, unified administration and enables Canadians to recognize at a glance their government at work for them. It facilitates access to government programs and services through clear and consistent identification.

■ **Guidelines for Cookies on Government of Canada Web Sites**, which provide direction on the use of cookies and other similar technologies to Web site developers and administrators, program and service content managers, privacy coordinators and other relevant Government of Canada officials involved in providing services on-line.

■ **Government Security Policy**, which requires departments to implement this policy when sharing Government of Canada information and other assets with other governments (including foreign, provincial, territorial, and municipal), international, educational and private sector organizations. In these cases, departments must develop arrangements that outline security responsibilities, safeguards to be applied, and terms and conditions for continued participation.

■ **Management Accountability Framework**, which provides deputy heads and all public service managers with a list of management expectations that reflect the different elements of current management responsibilities.

■ **Notice and Consent Guidelines in an On-Line Environment**, which provide direction on how best to create and present Privacy Notice Statements and obtain informed consent to Web site developers and administrators, program and service content managers, privacy coordinators and other relevant Government of Canada officials involved in providing services on-line.

■ **Official Languages Policy Framework**, which sets the primary objectives of the official languages program to deliver quality services to the public through institutional bilingualism.

■ **Policy Framework on Information and Technology**, which provides guiding principles to sound information and technology management practices across government. The Policy is guided by, among others, the following principles:

**Information** under the control of federal departments supports public reporting, sound planning, and decision making. Because information is a valuable asset, it must be treated as such and that is a responsibility of all employees.

**Information technology** is a key enabler to achieving well-managed information in support of policies, programs, and services.

**Stewardship:** Information must be rigorously managed throughout its life cycle, regardless of medium or format, for as long as it is required by departments to meet their operational and fiscal responsibilities, legal obligations, and accountabilities.

**A Whole-of-government approach** means working across departmental and jurisdictional boundaries to provide, within legislated parameters, timely access to seamless and integrated information.

**Effective security,** ensuring the confidentiality, integrity, and availability of information. Effective security of information requires a systematic approach that identifies and categorizes information and associated assets, assesses risks to them, and implements appropriate personnel, physical, and information technology safeguards.

**Transparency:** Employees document actions and decisions in support of government programs and activities, and maintain information so that it is accessible to anyone who is authorized to have access, including those individuals exercising their rights to access information under the *Access to Information Act* and the *Privacy Act*. Managing information to support transparency and accountability also means reporting on performance in ways that are clear to Canadians and Parliament.

**Official languages.** The delivery of quality services to the public is guided by the principle of institutional bilingualism.

- **Policy on Information Management**, which provides direction on how federal government institutions should create, use, and preserve information to fulfill their mandates, support program and service delivery, achieve strategic priorities, and meet accountability obligations prescribed by law. The Policy is based on the recognition that:
  - all employees are responsible for the management of information under their control and custody;
  - information management requirements must be built into program design and processes; and
  - information management is most effective in a culture that values information and adopts supportive governance and accountability structures.
- **Policy on Management of Information Technology**, which aims achieving efficient and effective use of information technology to support government priorities and program delivery, to increase productivity, and to enhance services to the public.
- **Policy on Service Standards for External Fees**, requiring that the provision of services external to the federal government, for which fees are charged, be

accompanied with service standards that are measurable and relevant at the level of the paying stakeholder.

- **Policy on the Use of Electronic Networks**, which:
  - mandates deputy heads to institute and implement policies and practices that promote the appropriate use of government electronic networks and provides guidance in relation thereto; and
  - authorizes monitoring of electronic networks for specific purposes.
- **Policy on the Use of Official Languages for Communications with and Services to the Public**, which mandates that when using media to communicate with the public, government institutions must ensure that their linguistic obligations are met.
- **Retention of Royalties and Fees from the Licensing of Crown-Owned Intellectual Property**, authorizing departments and agencies to receive, through Supplementary Estimates, an annual appropriation equal to all revenues arising from the licensing of Crown-owned intellectual property which the department or agency remitted to the Consolidated Revenue Fund in the previous fiscal year. Such appropriation is intended for use toward the costs associated with incentive awards for technology transfer and other technology transfer activities undertaken by the department or agency.

Further directives and guidelines pertaining to the dissemination of government information holding such as geographic data may also be found in:

- the **Common Look and Feel for the Internet**, that provides recommendations for standards and includes guidelines for implementation on departmental intranets, extranets and other electronic networks;
- the **Government of Canada Internet Guide**, which advocates universal design and the inclusion of alternate accessibility mechanisms to ensure that Government web sites are developed to serve the largest possible audience using the broadest range of hardware and software platforms; and
- the **Practical Guide on Databases for Managers**, that discusses some of the key factors and issues involved in typical electronic dissemination initiatives and provides guidance on how to deal with typical obstacles and how to approach some of the key decisions.

## **Federal Mandates and Internal Policies**

Dissemination of government geographic data is not only encouraged and facilitated by the general statutory and administrative frameworks on dissemination of government information. It is also, in the case of several science-based federal departments and agencies, enshrined in legislative mandates and directed through various internal policies to support specific goals of:

- cost recovery
- quality preservation
- promotion; and/or
- recognition.

## **4.2 Government Licensing: Fundamentals, Authority and Constraints**

### **4.2.1 Generalities on Intellectual Property**

Government geographic data licence agreements are the written expression of a contractual relationship entered into by government in support of overarching government mandates and policy objectives. The terms governing government geographic data licence agreements find their justification in the data dissemination objectives established by government in support of the same overarching mandates and policy objectives.

The subject-matter of government geographic data licence agreements is intellectual property. A basic understanding of intellectual property, and perhaps more precisely of copyright law, is useful to appreciate the legal intricacies of government geographic data licence agreements.

Intellectual property can be described as property that consists of assets that can be perceived or comprehended, but which cannot be felt or touched. It refers to intangible property to which attaches economic rights that provide for exclusivity of exploitation recognized by law. It consists of products of the inventive human mind, and includes the distinct fields of patents, copyright, trademarks, trade secrets, confidential information and similar rights. These offer protection over such things as inventions, original expression in literary, artistic, musical, dramatic works and compilations, words or symbols that distinguish the source or quality of goods or services, and non public information.

Of the various types of intellectual property protection afforded in Canada, copyright is of the most relevance to government geographic data.

## 4.2.2 Object of Copyright Law

The central object of copyright law is to grant authors exclusive rights of exploitation in their original literary, artistic, dramatic, musical works and compilations thereof or compilations of data, as well as rights to ensure that their work is properly credited and not changed in any way that harms the author's reputation.

### 4.2.2.1 Contours of Copyright Protection

#### ▪ The Work Must Be a Subject-Matter of Copyright

The *Copyright Act* protects original literary, dramatic, artistic and musical works, compilations thereof and compilations resulting from the selection and arrangement of data. Copyright does not protect the facts contained in such works, but rather their expression<sup>27</sup>. Literary works, artistic works and compilations (being the categories of works most pertinent to geographic data) that attract copyright protection include original books, pamphlets and other writings, illustrations, sketches, drawings, maps, charts, plans, tables and compilations thereof. Original depictions of road networks, of municipal boundaries, of wildlife habitats and ocean disturbances, for instance, are proper subject-matter of copyright.

#### ▪ Only Original Work is Protected

For a work to benefit from copyright protection, it must be original. An original work under Canadian law is one that originates from the author and is not copied from another work, and must be the product of the author's exercise of skill and judgment. Skill refers to the use of one's knowledge, developed aptitude or practiced ability in producing the work. Judgment is evidenced by the use of one's capacity for discernment or ability to form an opinion or evaluation by comparing different possible options in producing the work. Street directories, tax tables, actuarial tables, accounting forms, agendas and tables contained in a diary, geographical maps and plans that are not copies of existing works and that are produced using skill and judgment have been found to be original works attracting copyright protection.

The exercise of skill and judgment required to produce the work must not however be so trivial that it could be characterized as a purely mechanical exercise. For example, any skill and judgment that might be involved in simply changing the font of a work to produce 'another' work would be too trivial so as to confer upon this other work copyright protection. Similarly, the mere mechanical or computerized juxtaposition of a large number of cities to an outline map may not constitute a work involving the originality or skill and judgment necessary to sustain a copyright.

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<sup>27</sup> See generally *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13.

## ▪ Copyright Protects Expression Only

As stated by the Supreme Court of Canada in *CCH Canadian Ltd. v. LSUC*:

*It is, I think, an elementary principle of copyright law that an author has no copyright in ideas but only in his expression of them...The ideas are public property, the literary work is his own.*<sup>28</sup>

Copyright protects the form and expression of an idea, not the idea itself. It is on this basis that there can be no copyright in news, concepts, facts, procedures, schemes or information, regardless of the time and labour expended to conceive, generate or collect them.

### 4.2.2.2 Derived Works

The exclusive rights conferred to the owner of copyright include the sole right to reproduce his work in the original form or in a derived form. The *Copyright Act* affords this protection in the introductory paragraph of s. 3(1), referring to the sole right to ‘reproduce the work or any substantial part thereof in any material form whatsoever’ as well as in certain sub-paragraphs of the same section.

What will constitute a substantial taking of a copyrighted work is assessed from both a quantitative and qualitative perspective and is, in all cases, a question of fact. Courts will however generally look at whether the ‘essence of the work’ has been appropriated when adjudicating whether a derived work reproduced a substantial part of an original work (thereby infringing on the copyright owner’s rights), as well as:

- the quality and quantity of the material taken;
- the loss to the copyright owner of his rights or reasonable expectation in relation to his original work;
- whether the material taken is the proper subject-matter of copyright;
- whether the extract was intentionally taken to save time and effort by the taker; and
- whether there is similarity of expression.

Arguably, and again based on the facts of each case, it may be that an unauthorized digitization by a third party of a copyrighted government chart or map, to produce ‘another work’, could be found to constitute a taking of a substantial part of the copyrighted work, and thus to constitute copyright infringement.

The right of the owner of copyright in his work is absolute. The improvement made by the person who takes a copyrighted work is immaterial. If a substantial part of a copyrighted work is taken without authorization, then there is infringement.

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<sup>28</sup> *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13 at para 8.



A party who wishes to produce a work derived from pre-existing copyrighted material must obtain the consent of the owner of copyright in the original work(s). In the absence of such consent, the derived work may infringe the copyright owner's rights. Consent may be obtained via permission or a licence agreement.

#### **4.2.3 Raw Data is not Protected under the Copyright Act**

As stated previously, facts, ideas, concepts, numbers, procedures, schemes and other types of raw data, alone and by themselves, are not protected under the *Copyright Act*, regardless of the time and labour expended to conceive, generate or collect them<sup>29</sup>.

For example, the quantification of a particular fish population in a given geographical area, arrived at through the combined use of highly sophisticated technology and human skill, is a fact that is not protected under the *Copyright Act*, notwithstanding the effort and resources allocated to arrive at such number. What is protected is the original expression of that fact, which may take the form of an original (i.e. that emanates from the author and is not copied from another work) literary work (a report, a letter, a memo, etc.) or artistic work (a graph, a map, a chart, etc.), as long as its production required skill and judgment.

Similarly, roads and distances, boundaries of a city, town or village are not protected by copyright. Copyright will subsist however in the depiction, representation or expression of such roads, distances and boundaries, provided they are original (i.e. they emanate from an author (an individual) and are not copied from another work) and are the result of skill and judgment.

#### **4.2.4 Data Sets as Protected Compilations under the Copyright Act**

Data sets, insofar as they constitute an original arrangement of literary or artistic works, or a work resulting from an original selection or arrangement of data, qualify as 'compilations' under the *Copyright Act* and thus benefit from copyright protection, provided: 1) they are original in the sense that they originate from the author and are not copied from another work; and 2) there is some minimal degree of skill and judgment in the overall selection or arrangement of the data comprising the data sets. The exercise of skill and judgment must not, however, be so trivial that it could be characterized as a mechanical exercise. Where the only originality in a data set is in the mere order in which the various items are placed, there may not be sufficient originality

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<sup>29</sup> They may, however, in limited circumstances, be protected via contract law and common law protections afforded to trade secrets, proprietary information and confidential information. Commercially valuable data claimed to be developed by a particular person may be protected as a trade secret, if the following elements are established: 1) the data must have the necessary quality of confidence about it. It must not be something that is public property, public knowledge or in the public domain. The data must have the basic attribute of inaccessibility; 2) the data must have been imparted in circumstances importing an obligation of confidence; 3) there must be a misuse or an unauthorized use of that information.

for copyright to subsist. The skill and judgment in selecting and arranging the data comprising the data sets must impart some quality or character that the raw material did not possess.

Government geographic data sets may consist of an arrangement of raw data such as facts, bare statistics, characters, symbols or other similar data; or may be comprised, in whole or in part, of other copyrighted works.

Raw data and other non-copyrighted subject-matter may be collected, compiled and expressed in a data set free from any constraints on use. However, the creation of data sets comprising, in whole or in part, of third party copyrighted works may be found to infringe the copyright owners' exclusive rights if their prior approval has not been secured. Hence, care must be exercised in the creation of data sets that include other copyrighted works. Securing appropriate authority from the copyright owner must precede the making of such data sets.<sup>30</sup>

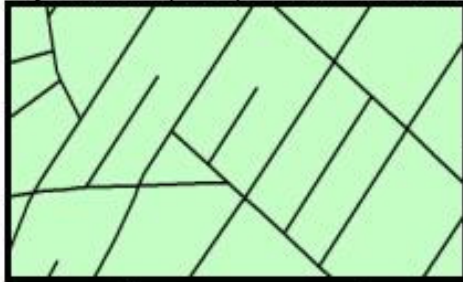
The following illustration depicts the particularities and associated legal risk of compilations. Generally, if source data are derived from copyrighted works, and the resulting work has an objective similarity to the source from which it derives to the point that it may be concluded that the "essence of the work" was appropriated, permission for use must be obtained. Permission is habitually obtained and evidenced in a licence agreement.

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<sup>30</sup> The mechanism of compilation is irrelevant. If copyrighted digital data are directly compiled into another source through automated means, or hand-digitized using the copyright source, permission of the copyright owner is required.

# Case Study - Compilation

**Compilation** (Compiled from facts and copyrighted sources)



Legal Risk

OK

Permission

OK

**Work** (Copyrighted Product)



OK

**Facts** (Raw Data)



Fieldwork



#### 4.2.5 Particularities of Government Licensing Activities

Government departments and agencies that produce and/or acquire geographic data sets are directed, through various policies and legislative mandates, to make such intellectual property available so as to generate further innovation and minimize duplication. Access to government-owned or government-licensed intellectual property is granted to users through licence agreements.

In legal terms, a licence agreement is a legally binding contract, enforceable as against its signatories. It is subject to the legal rigors that apply to the formation of contracts, in addition to the statutory constraints and judicial pronouncements pertaining to contracts in general.

A licence agreement will, by its very nature, contain a licence grant. Simply put, a licence grant is a permission given by the owner of property (the “licensor”) to someone else (the “licensee”) allowing that person to use the owner’s property free from legal recourse.

There are basically three (3) categories of licence grants. The first is an **exclusive** licence grant, which gives to the licensee the right to exercise the licensed rights at the exclusion of others, including the licensor. The second is a **sole** licence grant, being one by which the licensor agrees that it will not grant to any third party the same rights as those granted to the licensee. A sole licence grant does not usually limit the licensor’s rights to use the licensed property. The third is a **non-exclusive** licence grant, by which the licensor reserves to itself the right to exercise the licensed rights and the right to grant an unlimited number of licence grants over the same licensed rights.

Government licence agreements are meant to crystallize and structure a particular contractual relationship, and, in support of particular policy imperatives, may contain little or numerous restrictions on the use that may be made by the licensee of the subject-matter of the licence agreement.

Government departments and agencies are however limited in the manner in which they may license geographic data sets they create or in respect of which they have licensed rights.

##### 4.2.5.1 Tenets of Crown law

It is important to have an appreciation of the theory and history of Crown law, as they shed light on the constraints imposed on government’s current data dissemination and licensing practices.

The legal system in Canada recognizes the Crown<sup>31</sup> as a legal person, capable of acquiring rights and liabilities under common law or statute law, capable of suing and being sued, and bound by the decisions of courts and other properly constituted tribunals. However, the Crown, although a legal person, is not in all instances subject to the same laws as other legal persons, namely corporations and private individuals. Furthermore, the Crown enjoys extensive powers that are not available to subjects (e.g., to collect taxes, to maintain an army, to enact and administer the laws which regulate and provide state services in a modern society), and certain privileges or exemptions from the general law of the land.

**The Crown enjoys powers, privileges and exemptions from the general law of the land**

The powers of the Crown are defined and limited by the Constitution<sup>32</sup> and further delineated by common law, various statutes and other legal rules of a non-constitutional nature. Broadly speaking, the powers of the Crown include the authority to enact laws dealing with:

- the borrowing of money over the public credit
- taxation
- the regulation of trade and commerce
- currency and coinage
- bankruptcy, bank incorporation and the issue of paper money
- bills of exchange and promissory notes
- interest
- legal tender
- federal works and undertakings
- public debt and public property
- responsibility for administering laws, maintaining public order, conducting military operations, directing foreign policy and managing state property.

The Crown also derives powers from the common law referred to as “prerogatives”, which are based on the inherent power of the monarch dating back to the Middle Ages. Although the prerogative powers of the Crown have been vastly narrowed over time, they remain significant and real<sup>33</sup>. The main areas in which Crown prerogative has survived and remains relevant today include:

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<sup>31</sup> In Canada and in other Commonwealth countries that recognize the same Queen as the formal head of state, the state (or government) is commonly referred to as “the Crown”. This usage dates from earlier times when all powers of government were vested in the monarch, and were exercised by delegation from the monarch. One could argue, with some support from the language of the Constitution, that this is still technically true of Canada today, but the theory bears no resemblance whatever to the actual lines of authority within Canadian government.

<sup>32</sup> The Constitution of Canada includes the Constitutional Acts of 1867 to 1982 and amendments thereto, various Canadian and Imperial statutes and orders-in-council, as well as relevant common law principles and customary rules and conventions.

<sup>33</sup> There may be subtleties in Quebec. Readers are advised to contact their legal services for further information.

- powers relating to the legislature (the Crown summons, prorogues and dissolves Parliament)
- powers relating to the conduct of foreign affairs
- powers relating to the armed forces
- appointments and honours
- immunities and privileges (e.g., the common law rule that statutes do not bind the Crown, except by express statement or necessary implication)
- the “emergency” prerogative (the right to take, in an emergency, whatever actions necessary to defend the sovereignty of the country).

Notwithstanding these rights to which the Crown is entitled under prerogative, the Crown is limited in how it may deal with its property rights.

#### 4.2.5.2 Acquisition of Intellectual Property by the Crown

The Crown, in general, has the same rights under the law as individuals and corporations to acquire and hold property, including intellectual property. The Crown acquires intellectual property mainly through four (4) means.

Firstly, the Crown may, pursuant to the *Copyright Act*<sup>34</sup>, acquire ownership of the copyright in works such as original data sets, where the work was produced by Crown employees as part of their duties, or where the work was prepared or published by or under the direction or control of the Crown<sup>35</sup>.

The Crown may also acquire rights in intellectual property consisting of inventions pursuant to the *Public Servants Inventions Act*<sup>36</sup> in instances where the inventions are created by public servants while:

- acting within the scope of their duties or employment or with facilities, equipment or financial aid provided by the federal government; and
- the invention resulted from or is connected with his or her duties or employment.

Thirdly, the Treasury Board policy *Title to Intellectual Property Arising Under Crown Procurement Contracts*<sup>37</sup> allows the Crown, in limited circumstances, to acquire intellectual property rights in works completed by contractors, such as when the deliverable under the contract consists of material subject to copyright. The exception, however, does not apply to computer software and related documentation, the intellectual property rights in which is to vest with the contractor.

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<sup>34</sup> *Copyright Act*, R.S.C. 1985, c. C-42.

<sup>35</sup> Sections 12 and 13(3) of the *Copyright Act*. Note that this position can be modified by simple agreement.

<sup>36</sup> *Public Servants Inventions Act*, R.S.C. 1985, c. P-32.

<sup>37</sup> See [http://www.tbs-sct.gc.ca/pubs\\_pol/dcgpubs/Contracting/tipaucpc\\_e.asp](http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/Contracting/tipaucpc_e.asp).

And lastly, the Crown may also acquire intellectual property rights through collaborative arrangements entered into notably with the private sector and academia and, to some extent, through certain types of transfer payments arrangements. Treasury Board policies and guidelines applicable to such arrangements should be consulted. They can be found on the Treasury Board website. Legal counsel should also be consulted to ascertain the propriety of the acquisition of intellectual property rights.

#### **4.2.5.3 Federal Statutory and Policy Constraints on Disposition of Crown Intellectual Property**

While the Crown may hold title to intellectual property, statutory enactments and government policy restrict to some degree its ability to dispose of it. Absent specific statutory authority (i.e. departmental legislation or the applicability of the *Public Servants Inventions Act* or the *Disposal of Surplus Crown Assets Act*, no transfer of Crown property, including intellectual property, may be effected without complying with the *Financial Administration Act*, which requires statutory authority or an order in council.

#### **Disposition of Crown IP requires compliance with key legislation and Treasury Board policy**



## CHAPTER 5

# KEY CONCEPTS OF THE INTEGRATED FRAMEWORK FOR THE LICENSING OF GOVERNMENT GEOGRAPHIC DATA

### 5.1 Common Approaches

Designing an integrated framework for the licensing of government geographic data requires building upon a common base, a common understanding of key concepts that will direct licensing practices.

This common base is reinforced and made evident by common structures and content across the model licence agreements provided in this *Guide to Best Practices*, superseded only by a limited number of specific provisions required to fulfill particular governmental geographic data dissemination objectives.

#### 5.1.1 Common Approach to Granting Rights to Licensees

The very essence of a licence agreement is contained in the grant clause, which details the scope of the rights licensed to the licensee.

The grant clause is the permission given by the licensor to the licensee to use the intellectual property that is the subject matter of the licence agreement. This permission may be general or limited in a number of ways, according to the type of licence agreement and the values and objectives it is intended to support. In reviewing various geographic licence agreements, rights granted often include the right to:

- use
- reproduce (copy)
- adapt
- extract (particularly when the licensed intellectual property is a database)
- further develop
- further distribute in part or in its entirety
- make back-up copies
- sublicense all or part of the licensed rights.

The grant clause will also indicate whether the licence grant is royalty-free or royalty-bearing. Stated dissemination objectives will mandate the appropriateness of including royalty provisions in particular licence agreements.

Also frequently included in the grant clause is the geographic boundary of the licence. For example, rights to a government geographic data set may be limited for use only in Canada. It should however be noted that global or world-wide rights should be the norm as relates to electronic dissemination of government geographic data, since it is



difficult and not always feasible to distinguish territories in an electronic environment. The extent of the rights granted to a licensee is, in the context of the licensing of government geographic data, a function of the rationale underlying the dissemination. Accordingly, there will be differences in the formulation of the grant clause supporting the unrestricted use model, the end-use model, the reseller model and the value-added reseller model.

■ **When the Rationale is to Promote Widest Use and Further Distribution of the Government Geographic Data (Unrestricted Use Model)**

When the stated objective of the dissemination activity is to promote the widest use and further distribution of the licensed government geographic data, the licence grant should confer upon the licensee:

- broad use to the licensed government geographic data;
- the right to sublicense its rights under the licence; and
- the right to develop and commercialize products that contain the licensed government geographic data.

The **Fee-Based Unrestricted Use Licence Agreement** and the **No-Fee Unrestricted Use Web Wrap Licence Agreement** are to be used in support of dissemination objectives of widest use possible of the government geographic data. Accordingly, the grant clauses contained in the **Fee-Based Unrestricted Use Licence Agreement** and in the **No-Fee Unrestricted Use Web Wrap Licence Agreement** (although slightly modified) read as follows:

### **3.0 LICENCE GRANT**

3.1 Subject to this Agreement, and in consideration for the payment of royalties as provided hereunder, Canada hereby grants to the Licensee a royalty-bearing, non-exclusive, world-wide, non-assignable licence to use, reproduce, extract, modify, translate, further develop and distribute the Canada Digital Data, and to manufacture and license Value-Added Products, and to sublicense any or all of such rights, for the whole of the period of time described in section 8 (*Term*) below, PROVIDED:

(a) all reproductions of the Canada Digital Data shall include the notice provided in section 4.1 and shall carry the caveat contained in section 7.1 hereof;

(b) all distributions of Value-Added Products and of the Canada Digital Data, in whole or in part, and any sublicense by the Licensee of its rights hereunder, shall be evidenced by a written agreement consistent with this Agreement and containing the terms and conditions set out in Schedule “C” attached hereto; and

(c) the Licensee shall not disassemble, decompile except for the specific purpose of recompiling for software compatibility, or in any way attempt to reverse

engineer the Canada Digital Data or any part thereof, and the Licensee shall not merge or link the Canada Digital Data with any product or database in such a fashion that gives the appearance that the Licensee may have received or had access to, information held by Canada about any identifiable individual, family, household, organization or business.

A royalty-bearing licence agreement may be transformed into a non-royalty-bearing licence, provided however such is not inconsistent with the dissemination objectives and internal policies of the relevant governmental department or agency.

■ **When the Rationale is to Promote Widest Use, With Restrictions on Further Distribution of the Government Geographic Data (End-Use Model)**

When the stated objective of the dissemination activity is to promote widest use of the licensed government geographic data with, however, restrictions on its further dissemination, the licence grant should confer upon the licensee broad rights to the licensed government geographic data; that said, the licensee should have no right to sublicense its rights to 3<sup>rd</sup> parties, and have no right to incorporate the licensed government geographic data into products it develops.

The **Fee-Based End-Use Licence Agreement** and the **No-Fee End-Use Licence Agreement** both support such imperatives. Accordingly, the grant clauses contained in the **Fee-Based End-Use Licence Agreement** and in the **No-Fee End-Use Licence Agreement** (although slightly modified) read as follows:

**3.0 LICENCE GRANT**

3.1 Subject to this Agreement, Canada hereby grants to the Licensee a royalty-free, non-exclusive, world-wide, non-assignable licence to use, reproduce, extract, modify, translate and further develop the Canada Digital Data, for the Licensee's own internal use, and as is necessary for the manufacture and distribution of Derived Products, for the whole of the period of time described in section 8.0 below (*Term*) PROVIDED all reproductions of the Canada Digital Data include the notice provided in section 5.1 and shall carry the caveat contained in section 7.1 hereof. For clarity, and as indicated in subsection 1.5 above, a Derived Product does not contain Canada Digital Data, in whole or in part.

**4.0 RESTRICTIONS ON USE OF THE CANADA DIGITAL DATA**

4.1 Notwithstanding section 3.1 above, the Licensee shall not, nor allow or direct any person to:

- (a) disassemble, decompile except for the specific purpose of recompiling for software compatibility, or in any way attempt to reverse engineer the Canada Digital Data or any part thereof;
- (b) publish, communicate or distribute the Canada Digital Data or any part thereof, to a third party, for any purpose whatsoever; or

(c) merge or link the Canada Digital Data with any product or database in such a fashion that gives the appearance that the Licensee may have received, or had access to, information held by Canada about any identifiable individual, family, household, organization or business.

4.2 Subsection 4.1(b) shall not be construed or deemed to prohibit reproduction, publication, communication or redistribution of parts of the Canada Digital Data:

(a) for the purposes of research or private study, criticism or review or news reporting, as contemplated by sections 29, 29.1 and 29.2 of the *Copyright Act*, R.S.C 1985, C-42; or

(b) by an educational institution, as defined in the *Copyright Act*, and for the purposes set out in section 29.4 of the *Copyright Act*,

provided in all instances the source is acknowledged in all such documents or communications in the following manner:

*“Source (or “Adapted from”, if appropriate): \_\_\_\_\_ (applied title of the department), \_\_\_\_\_(name of product), \_\_\_\_\_(specific identifiers, etc...)”*

Government departments and agencies may opt to impose on an end-use licensee royalty payment and appurtenant reporting obligations, as long they are not inconsistent with dissemination policy or imperatives.

■ **When the Rationale is to Promote Widest Use Through Access to Established Distribution Channels, While Protecting the Integrity of the Licensed Government Geographic Data (Reseller Model)**

When the stated objective behind a dissemination activity is to promote the widest use possible of the licensed government geographic data through access to established distribution channels, while protecting the integrity of the licensed government geographic data, the licence grant to the licensee (reseller) should be limited in scope, prohibiting the licensee (reseller) from modifying the licensed government geographic data.

The reseller model supports such a distribution model. An appropriate licence grant for use in a **reseller agreement** would therefore read as follows:

**3.0 LICENCE GRANT**

3.1 Subject to this Agreement, and in consideration of the payment of royalties as provided hereunder, Canada grants to the Reseller a royalty-based, non-exclusive, world-wide, non-assignable licence to use, reproduce, extract, modify and translate the Canada Digital Data, as is necessary for the purposes of promoting to the Market and distributing to End-Users the Canada Digital Data, in whole or in part, for the whole of the period of time

described in section 8 (*Term*) PROVIDED:

(a) the Reseller shall not modify or alter in any way the Canada Digital Data, other than as authorized in Schedule “C” attached hereto;

(b) any and all reproductions of the Canada Digital Data shall include the notice provided in section 4.1 and shall carry the caveat contained in section 7.1 hereof; and

(c) all distributions to End-Users of the Canada Digital Data, in whole or in part, shall be on an end-use basis and shall be evidenced by a written end-use licence agreement containing the terms and conditions set out in Schedule “D” attached hereto.

3.2 The Reseller shall not use the Canada Digital Data or any part thereof to develop any new product for distribution or for use by any other party.

3.3 The Reseller shall not disassemble, decompile except for the specific purpose of recompiling for software compatibility, or in any way attempt to reverse engineer the Canada Digital Data or any part thereof, and the Reseller shall not merge or link the Canada Digital Data with any product or database in such a fashion that gives the appearance that the Reseller may have received or had access to, information held by Canada about any identifiable individual, family, household, organization or business.

■ **When the Rationale is to Promote Widest Use Through Value-Added Products (Value-Added Reseller Model)**

When the rationale supporting a dissemination activity is the promotion of widest use possible of the government geographic data through value-added products, the licence grant should allow the licensee (value-added reseller) broad rights to the government geographic data, including the right to incorporate the government geographic data into value-added products.

The value-added reseller model supports such dissemination policy. Accordingly, the licence grant contained in the **Value-Added Reseller Agreement** reads as follows:

**LICENCE GRANT**

Subject to this Agreement, and in consideration of the payment of royalties as provided hereunder, Canada hereby grants to the Value-Added Reseller a non-exclusive, non-assignable licence to use, reproduce, extract, modify, translate and further develop the Canada Digital Data, in the Territory, as is

necessary for the purposes of:

- (a) integrating the Canada Digital Data, in whole or in part, into existing VAR Products;
- (b) making or causing to be made new VAR Products;
- (c) licensing to End-Users such of the Canada Digital Data as is incorporated into VAR Products, provided:
  - i) any and all reproductions of the Canada Digital Data shall include the notice provided in section 4.1 and shall carry the caveat contained in section 7.1 hereof; and
  - ii) all distributions to End-Users shall be on an end-use basis and shall be evidenced by a written end-use licence agreement containing the terms and conditions set out in Schedule “D” attached hereto.
- (d) demonstration and marketing to the Market,

for the whole of the period of time described in section 8.0 (*Term*).

3.2 The Value-Added Reseller shall not sublicense to a third party any of the rights conferred to it pursuant to section 3.1 above.

3.3 The Value-Added Reseller shall not disassemble, decompile or in any way attempt to reverse engineer the Canada Digital Data or any part thereof, and the Value-Added Reseller shall not merge or link the Canada Digital Data with any product or database in such a fashion that gives the appearance that the Value-Added Reseller may have received or had access to, information held by Canada about any identifiable individual, family, household, organization or business.

### **5.1.2 Common Approach to the Right to Make Enhancements To Licensed Government Geographic Data and Distribute New Products**

From a federal perspective, the primary objectives of government geographic data distribution initiatives must be examined against the backdrop of the Government of Canada’s overall and overarching objective of promoting economic growth and job creation in Canada through innovation. Science-based governmental departments and laboratories are directed, through various policies and legislative mandates, to make their intellectual property available so as to generate further innovation. Access to government intellectual property is granted through various arrangements, including

licence agreements. Licence agreements, supportive of particular dissemination policy imperatives, may contain little or numerous restrictions on the use that may be made by the licensee of the licensed government geographic data.

To bridle the ability of the private and public sectors to further develop licensed government geographic data by imposing restrictions on the ability to enhance the licensed data and commercialize those enhancements may arguably curtail government objectives of encouraging and supporting an innovation-driven economy. Accordingly, the integrated framework employs a straightforward approach with respect to the rights of licensees to create and commercialize enhancements made to licensed government geographic data, based on the rationale underlying a particular dissemination objective.

■ **Where the Objective is Widest Use and Further Distribution of the Licensed Data, Rights To Make Enhancements To Licensed Data and to Distribute Value-Added Products Should be Granted**

When the stated objective of the producer of government geographic data is to promote the widest possible use and further distribution of the licensed government geographic data, licensees should generally have the right to develop and commercialize products and applications that incorporate any of the licensed data and add value to it.

Such is the approach that has been taken in respect of the unrestricted model and the distributor model, as is evidenced by the interplay between the licence grant contained in the **No-Fee Unrestricted Use Web Wrap Licence Agreement**, the **Fee-Based Unrestricted Use Licence Agreement** and the **Value-Added Reseller Agreement**, and the definition of “Value-Added Product” contained in those agreements.

The **No-Fee Unrestricted Use Web Wrap Licence Agreement**, the **Fee-Based Unrestricted Use Licence Agreement** and the **Value-Added Reseller Agreement** all allow the licensee or the value-added reseller, as the case may be, not only to use and distribute the licensed government data, but also:

- to make improvements to the licensed government geographic data; and
- to manufacture products that incorporate the licensed government geographic data. Such products are referred to in the **No-Fee Unrestricted Use Web Wrap Licence Agreement** and in the **Fee-Based Unrestricted Use Licence Agreement** as “Value-Added Products”, defined as follows:

“**Value-Added Products**” means any product, system, sub-system, device, component, material or software developed or manufactured, or caused to be developed or manufactured, by the Licensee in the exercise of its rights under this Agreement. Value-Added Products may be developed or manufactured by constructing, deriving, developing, adapting, incorporating or by any other means using the Canada Digital Data, in whole or in part.

The licence grants contained in section 3 of the **No-Fee Unrestricted Use Web Wrap Licence Agreement**, the **Fee-Based Unrestricted Use Licence Agreement** and the **Value-Added Reseller Agreement**:

- support this common approach to the right of the licensee (or value-added reseller, as the case may be) to make improvements and commercialize products which contain the licensed government data; and
  - contribute to the achievement of the dissemination policy objective of widest use and further development of the licensed government geographic data.
- **Where the Objective is Widest Use with Controls on Further Distribution, the Right to Make Enhancements To Licensed Data for the Licensee’s Internal Use, and to Distribute Products Should be Granted, Provided Products Do Not Incorporate the Licensed Data**

When the stated objective of a data dissemination initiative is to promote the widest possible use and further development of the licensed government geographic data with, however, restrictions on downstream distribution, licensees (whom, in such instances, would be ‘end-use licensees’) should generally be granted the right to further develop licensed government geographic data, for the licensees’ own internal purposes, and create new products. However, given the rationale underlying the end-use model and its primary goal of control over the further distribution and use of the licensed government geographic data, the production and commercialization of new products containing the originally licensed data, in whole or in part, should not be permitted.

The **No-Fee End-Use Restricted Licence Agreement** and the **Fee-Based End-Use Restricted Licence Agreement** both allow the licensee not only to use the licensed government data, but also:

- to make improvements to the licensed government geographic data, for the licensee’s own internal purposes; and
- to manufacture products that are based on the licensed government geographic data, as long as such products do not incorporate the licensed government geographic data, in whole or in part. Products that may be developed by end-use licensees under this model are termed “Derived Products”, and are defined as follows in the No-Fee End-Use Restricted Licence Agreement and in the Fee-Based End-Use Restricted Licence Agreement:

“**Derived Products**” means any product, system, sub-system, device, component, material or software developed or caused to be developed by the Licensee that interprets the Canada Digital Data but does not incorporate the Canada Digital Data, in whole or in part.



### **5.1.3 Common Approach to Ownership Rights to Enhancements Made To Licensed Government Geographic Data**

Mindful of the government's objective to spur innovation by making government intellectual property accessible, the approach advocated permits all licensees, with the exception of the reseller, to further improve and make modifications to licensed government geographic data; and to retain the intellectual property rights in such modifications.

Clauses reflecting this approach are contained at section 2.1 of:

- the No-Fee Unrestricted Use Web Wrap Licence Agreement;
- the Fee-Based Unrestricted Use Licence Agreement;
- the No-Fee End-Use Licence Agreement;
- the Fee-Based End-Use Licence Agreement; and
- the Value-Added Reseller Agreement

and, apart for some minor contextually required modifications, read as follows:

Subject to section 2.2 hereof, and without affecting Canada's Intellectual Property Rights in and to Canada's Data and any third-party's Intellectual Property Rights in Data contained in the Canada Digital Data, all Intellectual Property Rights in and to any modification, translation or further development made by the Licensee to the Canada Digital Data in the exercise of the Licensee's rights under this Agreement shall vest in the Licensee or in such person as the Licensee shall decide.

### **5.1.4 Common Approach to Managing Legal Risk**

An approach to managing risk has also been developed for widespread implementation within the integrated framework.

The provision by government of programs and services necessarily entails some level of risk. However, modern comptrollership initiatives have developed sound approaches to managing such risk, including legal risk.

The possibility of liability attaching to a producer of government geographic data as a consequence of its dissemination of government geographic data, either as a result of a legal proceeding brought by a licensee or a third party, is a genuine concern. There are, however, mechanisms to manage such risks, namely through contractual indemnities and through the inclusion of contractual provisions disclaiming the fitness or accuracy of the licensed data.

#### **▪ Inclusion of an Indemnity Provision**

An indemnity is an undertaking whereby one party agrees to indemnify another upon the occurrence of a loss.



Indemnity is a particularly thorny issue, as government departments and agencies do not, as a matter of practice, give standard indemnification. They typically limit their obligation to indemnifying the other party for breaches of their representations and warranties and in respect of the negligent actions of their employees.

This being said, it is common for government departments and agencies, and part of a sound approach to managing legal risk, to obtain from its licensees indemnities and, accordingly, to include in all licence agreements:

- an acknowledgement from the licensee that it shall have no recourse against the producer of the licensed government geographic data for any loss that it may incur by reason of its use of the government-licensed data. Such acknowledgement is worded as follows in the appended licence agreements:

THE LICENSEE SHALL HAVE NO RECOURSE AGAINST CANADA, WHETHER BY WAY OF ANY SUIT OR ACTION OR OTHER, FOR ANY LOSS, LIABILITY, DAMAGE OR COST THAT THE LICENSEE MAY SUFFER OR INCUR AT ANY TIME, BY REASON OF THE LICENSEE'S POSSESSION OR USE OF THE CANADA DIGITAL DATA, OR ARISING OUT OF THE EXERCISE OF ITS RIGHTS OR THE FULFILMENT OF ITS OBLIGATIONS HEREUNDER.<sup>38</sup>

- an undertaking of the licensee to indemnify and hold harmless the producer of the government geographic data from all claims arising out of the licensee's possession or use of the licensed data. Such indemnity is worded as follows in the appended licence agreements:

YOU SHALL AT ALL TIMES INDEMNIFY AND HOLD CANADA AND ITS MINISTERS, EMPLOYEES AND AGENTS HARMLESS FROM ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, COSTS, ACTIONS OR OTHER PROCEEDINGS MADE, SUSTAINED, BROUGHT OR PROSECUTED BY ANY PERSON IN ANY MANNER, BASED UPON, OR OCCASIONED BY, OR ATTRIBUTED TO ANY INJURY, INFRINGEMENT OR DAMAGE ARISING OUT OF ANY OF YOUR ACTIONS OR OMISSIONS, ARISING FROM ERRONEOUS COMMUNICATION MADE BY YOU, OR ARISING FROM YOUR PERFORMANCE OR NON-PERFORMANCE OF YOUR RIGHTS AND OBLIGATIONS HEREUNDER OR ARISING FROM THE

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<sup>38</sup> See section 6.2 of the No-Fee Unrestricted Use Web Wrap Licence Agreement; section 7.2 of the Fee-Based Unrestricted Use Licence Agreement and of the No-Fee End-Use Licence Agreement; section 8.2 of the Fee-Based End-Use Licence Agreement; and section 7.3 of the Reseller Agreement and of the Value-Added Reseller Agreement. The clause appears in capitalized font to ensure that it is brought to the attention of the licensee, the reseller or the value-added reseller, as the case may be.

MANUFACTURE, PUBLICATION, DISTRIBUTION OR THE USE OF VALUE-ADDED PRODUCTS.<sup>39</sup>

▪ **No Representations or Warranties as to the Accuracy or Fitness of the Licensed Data**

A representation is a statement or assertion made by one party during negotiations on some matter which, often times, has had a bearing on the other party's decision to enter into the agreement. A warranty, on the other hand, is a statement or representation intended to be a binding covenant on the part of the party who makes it.

Some representations and warranties are generic to all intellectual property licence agreements and apply to both parties. They commonly include representations and warranties that:

- the parties have the capacity and authority to enter into the agreement;
- the agreement will bind both parties;
- the transaction is not restricted by, or in conflict with, any other obligations, contracts, instruments to which parties are bound;
- the representations and recitals contained in the agreement are accurate and true;
- full disclosure of all material facts has been made during negotiations;
- the parties have the legal authority to do what they contractually promised to do without causing harm or liability to other persons; and
- the transaction complies with and does not contravene any Canadian laws or regulations.

Since most representations and warranties in intellectual property licences go to the existence and strength of the licensed intellectual property, they are usually requested of the licensor<sup>40</sup>. A government department or agency, as licensor, may assert that it owns the licensed intellectual property or at least has the ability to grant the licensed rights which the licence purports to grant, provided such, in fact, has been established. However, it should expressly state that it makes no representations and warranties on

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<sup>39</sup> See section 6.3 of the No-Fee Unrestricted Use Web Wrap Licence Agreement; section 7.3 of the Fee-Based Unrestricted Use Licence Agreement and of the No-Fee End-Use Licence Agreement; section 8.3 of the Fee-Based End-Use Licence Agreement; and section 7.4 of the Reseller Agreement and of the Value-Added Reseller Agreement. The clause appears in capitalized font to ensure that it is brought to the attention of the licensee, the reseller or the value-added reseller, as the case may be.

<sup>40</sup> Licensees usually do not have much to represent and warrant, except in the case of commercialization agreements.

the accuracy, usefulness, enforceability and validity rights; and should specifically disclaim any implied warranty of merchantability or fitness for a particular purpose.

This common approach to managing legal risk associated with the licensing of government geographic data is expressed in the appended standard licence agreements as follows:

CANADA MAKES NO REPRESENTATION AND GIVES NO WARRANTY OF ANY KIND WITH RESPECT TO THE ACCURACY, USEFULNESS, NOVELTY, VALIDITY, SCOPE, COMPLETENESS OR CURRENCY OF THE CANADA DIGITAL DATA AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE CANADA DIGITAL DATA<sup>41</sup>.

### **5.1.5 Common Approach to Acknowledgement of Source and Incorporation of Metadata**

It is appropriate and consistent with both the rationale underlying the dissemination of government geographic data and federal Treasury Board policy that the licensee acknowledge the appropriate department or agency as the source of the licensed government geographic data and incorporate metadata supplied with the said data in any downstream distribution<sup>42</sup>.

Requirements for acknowledgement of source and for the incorporation of government or agency metadata will slightly differ, depending on whether the licensee has the right to incorporate the licensed data into products it develops. In instances where the licensee is granted such right, as is provided in the No-Fee Unrestricted Use Web Wrap Licence Agreement, in the Fee-Based Unrestricted Use Licence Agreement and in the Value-Added Reseller Agreement, requirements for acknowledgement of source and for the incorporation of government or agency metadata is worded as follows:

4.1 The Licensee shall include and maintain on all reproductions of the Canada Digital Data, produced pursuant to section 3 above, as well as all metadata that was provided by Canada with the Canada Digital Data, the following notice:

*Reproduced and distributed with the permission of \_\_\_\_\_*

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<sup>41</sup> See section 6.1 of the No-Fee Unrestricted Use Web Wrap Licence Agreement; section 7.1 of the Fee-Based Unrestricted Use Licence Agreement and of the No-Fee End-Use Licence Agreement; section 8.1 of the Fee-Based End-Use Licence Agreement; and section 7.1 of the Reseller Agreement and of the Value-Added Reseller Agreement. The clause appears in capitalized font to ensure that it is brought to the attention of the licensee, the reseller or the value-added reseller, as the case may be.

<sup>42</sup> Metadata generally refers to information about data. Metadata usually follow an approved standard providing a common set of terminology, definitions and information about values to be provided. Metadata describe the “who, what, where, when, why and how” of ever aspect of the data. From a governmental perspective, metada assists in organizing and maintaining the government’s internal investment in the data, provides information to data catalogs and clearinghouses and provides information to assist users of the data. See discussion at section 2.4.1 of this *Guide to Best Practices*.

*(applied title of the department)*

4.2 Where any of the Canada Digital Data is contained within a Value-Added Product, the Licensee shall include in a prominent location on said Value-Added Product the following notice:

*This product has been produced by or for (name of the Licensee) and includes data provided by \_\_\_\_\_ (applied title of the department)*

*The incorporation of data sourced from \_\_\_\_\_ (applied title of the department) within this product shall not be construed as constituting an endorsement by \_\_\_\_\_ (applied title of the department) of our product.*

or any other notice approved in writing by Canada.

4.3 The Licensee shall ensure that no acknowledgment of Canada, except as permitted under sections 4.1 and 4.2 above, shall be shown in association with any form of promotion or advertisement of Value-Added Products. The Licensee shall not include in its promotional material:

(a) the name, crest, logos, flags or other insignia or domain names of Canada, without the prior written approval of Canada, which approval may be refused at Canada's sole discretion; or

(b) any annotation of any kind that may be interpreted as an endorsement by Canada of the Value-Added Products.<sup>43</sup>

In instances where the licensee is not authorized to incorporate the licenced government geographic data into products it develops, as is the case under the end-use model and under the reseller model, the appropriate clause dealing with attribution would read as follows:

5.1 The Licensee shall include and maintain on all reproductions of the Canada Digital Data, produced pursuant to section 3.0 and section 4.2 above, as well as all metadata that was provided by Canada with the Canada Digital Data, the following notice:

*Reproduced with the permission of \_\_\_\_\_ (applied title of the department)*

5.2 The Licensee shall ensure that no acknowledgment of Canada, except as permitted under section 5.1 above, shall be shown in association with any form of promotion or advertisement of Derived Products. The Licensee shall not include in its promotional material:

(a) the name, crest, logos, flags or other insignia or domain names of Canada, without the prior written approval of Canada, which approval may be refused at

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<sup>43</sup> See section 4 of the No-Fee Unrestricted Use Web Wrap Licence Agreement, of the Fee-Based Unrestricted Use Licence Agreement and of the Value-Added Reseller Agreement.

Canada's sole discretion; or

(b) any annotation of any kind that may be interpreted as an endorsement by Canada of the Derived Products.

5.3 The Licensee shall include in a prominent location on all Derived Products the following notice:

*This product has been produced by or for (name of Licensee) based on data provided by \_\_\_\_\_ (applied title of the department).<sup>44</sup>*

### **5.1.6 Common Approach to Fees and Royalties**

Fees and royalties are, generally speaking, one of the main benefits to any licensor, including government departments and agencies, in a licence agreement.

Fee and royalty schemes typically take one (1) of three (3) forms:

- fixed sum payment: for example, a signing fee payable upon execution, a fixed sum payment made in installments, a fixed sum payment made at different times or a combination of the foregoing;
- royalties: a payment of sums proportional to prescribed activities of the licensee. A royalty is often calculated as
  - a percentage of the net selling price, defined to exclude such items as volume or other discounts, rebates, returns and taxes;
  - a fixed sum per article; or
  - a combination of fixed payment and royalties.

There is no magic formula concerning the appropriate amount of fees, royalties or the royalty rates to be charged to a licensee. Arguably, an appropriate amount is what the licensee is willing to pay, given the practice in the relevant industry and the value of the intellectual property in the marketplace.

In recognition of departments and agencies' varying mandates and cost-recovery policies and targets, it is suggested that provisions for fees and royalties schemes be set out in a Schedule to the licence agreements. The appended standard licence agreements demonstrate how this may be done.

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<sup>44</sup> See section 5 of the No-Fee End-Use Restricted Licence Agreement for Government Geographic Data and section 6 of the Fee-Based End-Use Restricted Licence Agreement. Note that the provision contained in the Reseller does not contain the requirement of attribution on Derived Products, as the Reseller has not right to develop Derived Products.

### 5.1.7 Common Approach to the Effective Date

The “effective date” of an agreement, or its duration, relates to the period of time during which it remains in force. It may be based on a specific length of time (e.g. from June 1, 2009 to May 31, 2010) or may be based upon the payment of yearly access fees.

An agreement may become effective on a mutually agreed date, as would be provided by the following formulation: “This agreement shall be effective as of the 1<sup>st</sup> day of June, 2009”; or as provided in the No-Fee Unrestricted Use Web Wrap Licence Agreement: “This Agreement is effective as of the date and time you download, access or otherwise use the Canada Digital Data...”.

The Fee-Based Unrestricted Use Licence Agreement, the No-Fee End-Use Restricted Use Licence Agreement, the Fee-Based End-Use Restricted Use Licence Agreement, the Reseller Agreement and the Value-Added Reseller Agreement all provide as follows:

This Agreement is effective as of the date of the last signature of the Parties and shall remain in effect for a period of \_\_\_\_ (\_\_\_\_) year(s), subject to sections 8.2 and 9.0 below.<sup>45</sup>

The term of a licence grant usually coincides with the term of the licence agreement; and such is the approach adopted in the context of the integrated framework for the licensing of government geographic data.

Given the impracticality and inefficiencies associated with fixed terms that do not renew automatically (i.e. tracking terms of a multitude of licence agreements, renegotiating on a piece-meal basis, etc), it is suggested that terms renew automatically, provided the licensee is not in breach of its obligations under the agreement (e.g. payment of fees and royalties).<sup>46</sup> The clause below, contained in the No-Fee Unrestricted Use Web Wrap Licence Agreement, in the Fee-Based Unrestricted Use Licence Agreement, in the No-Fee End-Use Restricted Licence Agreement, reflects this common approach to automatic renewals.

Provided the Licensee is not in breach of any of the terms and conditions of this Agreement at the end of the term, this Agreement shall be automatically renewed for successive one (1) year terms, subject to section 9 below, unless either Party gives written notice to the other Party of the non-renewal of this Agreement at least

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<sup>45</sup> See section 8.1 of the Fee-Based Unrestricted Use Licence Agreement, of the No-Fee End-Use Restricted Use Licence Agreement, of the Reseller Agreement and of the Value-Added Reseller Agreement, and section 9.1 of the Fee-Based End-Use Restricted Use Licence Agreement. The No-Fee Unrestricted Use Web Wrap Licence Agreement contains a slightly modified clause (at section 7) which reflect the particularities of electronic contracting.

<sup>46</sup> There may however be instances where prudence would militate against automatic renewal (i.e. when the relationship is new, where the business arrangement is complex, etc.)

thirty (30) days prior to the end of the then-current term.<sup>47</sup>

### 5.1.8 Common Approach to Termination and Surviving Obligations

It is recommended in the context of the integrated framework for the licensing of government geographic data that government departments or agencies, as licensors, be given the right to terminate the agreement:

- for cause, upon notice to the licensee; or
- with the written agreement of the licensee.

Typical events that may trigger the right of government departments or agencies, as licensor, to immediately terminate an agreement include:

- default in payment of fees and/or royalties;
- exploitation of intellectual property outside the scope of the licensed rights; and
- breach of a representation or warranty.

Licence agreements usually contain a provision allowing the licensee time to cure a default which has been brought to the licensee's attention by the government department or agency (as licensor), failing which the agreement may be terminated, without further notice.

This common approach is reflected in the appended model licence agreements, which, apart from the No-Fee Unrestricted Use Web Wrap Licence Agreement, all provide as follows:

Notwithstanding section 9.0 above, this Agreement may be terminated prior to its expiration:

- (a) automatically, upon Canada giving thirty (30) days written notice to the Licensee of termination of the Agreement by reason of default, if the Licensee commits or permits a breach of any of the terms and conditions of this Agreement;
- (b) upon written notice of termination given by either Party at any time, and such termination shall take effect thirty (30) days after the receipt by the other Party of such notice; or
- (c) upon written agreement of the Parties.<sup>48</sup>

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<sup>47</sup> See section 7.2 of the No-Fee Unrestricted Use Web Wrap Licence Agreement, section 8.2 of the Fee-Based Unrestricted Use Licence Agreement, of the No-Fee End-Use Restricted Use Licence Agreement, of the Reseller Agreement, of the Value-Added Reseller Agreement, and section 9.2 of the Fee-Based End-Use Restricted Use Licence Agreement.

<sup>48</sup> See section 9.1 of the Fee-Based Unrestricted Use Licence Agreement, of the No-Fee End-Use Restricted Use Licence Agreement, of the Reseller Agreement and of the Value-Added Reseller Agreement, and section 10.1 of the Fee-Based End-Use Restricted Use Licence Agreement. The No-Fee



Termination should not affect those obligations meant to survive termination.

Clauses that typically survive termination or expiration of a licence agreement include:

- the obligation to pay royalties (where appropriate);
- reporting obligations (where there are royalty payment obligations);
- acknowledgement of the licensee that it shall have no recourse as against the Crown;
- the obligation of the licensee to indemnify the Crown (as licensor); and
- warranties and representations.

### 5.1.9 Common Approach to General Provisions

#### ▪ **Applicable law**

Dissemination through electronic means generally entails global access. It is therefore important to specify in licence agreements enabling dissemination via electronic means the applicable laws for the interpretation of the licence agreement or distributor agreement.

In the context of government geographic data licences, it is best to choose a Canadian jurisdiction, as the implicated government department or agency will want the agreement interpreted according to the laws familiar to its legal advisors. The appended licence agreements all provide as follows:

*This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws in effect in the Province of Ontario, and of Canada, as applicable.*<sup>49</sup>

#### ▪ **Entirety of Agreement**

It should be clear that the agreement, along with its recitals and any schedules and attachments to it, represent the entire agreement between the parties. The agreement therefore supersedes any other written or oral agreements and any implied or explicit previous agreements. A clause asserting the entirety of the agreement may be worded as follows:

*This Agreement, including its recitals and Schedule(s) \_\_\_\_\_ attached hereto and incorporated herein, constitute the entire agreement between the*

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Unrestricted Use Web Wrap Licence Agreement contains a slightly modified clause (at section 7.2) which reflect the particularities of electronic contracting.

<sup>49</sup> See section 8.1 of the No-Fee Unrestricted Use Web Wrap Licence Agreement, section 12.1 of the Fee-Based Unrestricted Use Licence Agreement, of the Fee-Based End-Use Restricted Licence Agreement, of the Reseller Agreement and of the Value-Added Reseller Agreement, and section 11.1 of the No-Fee End-Use Restricted Use Licence Agreement.



*Parties with respect to its subject matter and supersede any prior agreement or communication of any kind between the Parties. This Agreement may only be amended in writing, signed by both Parties, which expressly state the intention to amend this Agreement.<sup>50</sup>*

▪ **Alternate Dispute Resolution**

Disputes or ambiguities relating to the interpretation of contracts may be settled by a number of mechanisms including negotiation, mediation and arbitration.

It is standard practice in government licensing to include alternative dispute resolution (ADR) clause, which provides that the parties will attempt to resolve disputes concerning the licence agreement or recommended modifications thereto:

- firstly, by negotiation;
- secondly, by mediation by a mutually acceptable mediator; and
- thirdly, by binding arbitration.

The ADR clause found in all of the appended licence agreements, with the exception of the No-Fee Unrestricted Use Web Wrap Licence Agreement, reads as follows:

*If a dispute arises concerning this Agreement, or if a recommended modification of any term of this Agreement cannot be agreed between the parties, the parties shall resolve the matter:*

- (a) *firstly, by negotiation*
- (b) *secondly, by mediation by a mutually acceptable mediator; or*
- (c) *thirdly, by binding arbitration<sup>51</sup>.*

▪ **No Waiver**

A provision should be included stipulating that a waiver by a party of any of its rights, or of the performance of any of the obligations of the other party, shall not constitute a waiver of any other right of such party or obligation of the other party. Standard wording, contained in all of the appended agreement is as follows:

*No condoning, excusing or overlooking by Canada of any default by the Licensee, at any time or times, in performing or observing any of the Licensee's*

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<sup>50</sup> See section 8.2 of the No-Fee Unrestricted Use Web Wrap Licence Agreement (slightly amended to reflect to particularities of electronic contracting), section 12.2 of the Fee-Based Unrestricted Use Licence Agreement, of the Fee-Based End-Use Restricted Licence Agreement, of the Reseller Agreement and of the Value-Added Reseller Agreement, and section 11.2 of the No-Fee End-Use Restricted Use Licence Agreement.

<sup>51</sup> See section 12.3 of the Fee-Based Unrestricted Use Licence Agreement, of the Fee-Based End-Use Restricted Licence Agreement, of the Reseller Agreement and of the Value-Added Reseller Agreement, and section 11.3 of the No-Fee End-Use Restricted Use Licence Agreement.

*obligations hereunder, will operate as a waiver, renunciation, surrender of or otherwise affect the rights of Canada in respect of any continuing or subsequent default. No waiver of these rights will be inferred from anything done or omitted by Canada, except by an express waiver in writing.*<sup>52</sup>

- **Order of Precedence**

It is advisable to include in agreements, to which schedules or attachments are appended, a provision setting out the order of precedence in the event of a conflict between a provision of the agreement and one of its schedules. The following is contained in all appended agreements:

*If there is a conflict or ambiguity between this Agreement and any schedules thereto, this Agreement shall prevail.*<sup>53</sup>

- **No Joint Venture**

It is important to clarify the relationship between the parties and the extent, if any, that any party is able to enter into obligations which will bind the other party to the agreement. Standard wording is as follows:

*The Parties expressly disclaim any intention to create a partnership, joint venture or joint enterprise. The Parties acknowledge and agree that nothing contained in this Agreement nor any acts of any party shall constitute or be deemed to constitute the parties as partners, joint venturers or principal and agent in any way or for any purpose. No Party has the authority to act for, or to assume any obligation or responsibility on behalf of the other Party. The relationship between the Parties is intended to be, and shall at all times be construed as that of licensor and licensee.*<sup>54</sup>

## **5.2 Concluding Observations on Common Approaches**

The implementation of a single, integrated framework for the licensing of government geographic data is contingent upon the promotion and increased use of standard licensing terms. The contractual clauses highlighted above provide the common base

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<sup>52</sup> See section 8.3 of the No-Fee Unrestricted Use Web Wrap Licence Agreement (slightly amended to reflect to particularities of electronic contracting), section 12.3 of the Fee-Based Unrestricted Use Licence Agreement, section 12.3 of the Fee-Based End-Use Restricted Licence Agreement, of the Reseller Agreement and of the Value-Added Reseller Agreement, and section 11.2 of the No-Fee End-Use Restricted Use Licence Agreement.

<sup>53</sup> See section 12.5 of the Fee-Based Unrestricted Use Licence Agreement, of the Fee-Based End-Use Restricted Licence Agreement, of the Reseller Agreement and of the Value-Added Reseller Agreement, and section 11.5 of the No-Fee End-Use Restricted Use Licence Agreement. Provision slightly modified in the No-Fee Unrestricted Web Wrap Licence Agreement.

<sup>54</sup> See section 12.6 of the Fee-Based Unrestricted Use Licence Agreement, of the Fee-Based End-Use Restricted Licence Agreement, of the Reseller Agreement and of the Value-Added Reseller Agreement, and section 11.6 of the No-Fee End-Use Restricted Use Licence Agreement.

upon which government geographic licence agreements are concluded.

While additions or deviations from the content of the appended model licence agreements may, in some instances, be warranted to support departmental concerns,<sup>55</sup> they should not simply reflect semantic preferences, should be few and in all cases should be discussed with departmental legal services units.

Government geographic licence agreements are legally enforceable contracts that bind the departments and agencies who are party to them. Care must be afforded to their drafting to ensure they support government dissemination objectives, are consistent with the myriad of policies governing government dissemination and contracting activities and meet the rigors of the law.

### **5.3 Electronic Contracting**

Core elements of GeoConnections' Canadian Geospatial Data Infrastructure include:

- making Canada's geographic information, tools and services readily accessible;
- allowing users to search thousands of geospatial databases from Canada and around the world through an Internet site;
- permitting users to easily download geographic data, maps and tools, to obtain electronically national-coverage base maps, data sets and satellite imagery;
- allowing users to explore interactive web-based educational materials, maps, images and cartographic animations

The electronic dissemination of government geographic data is a fundamental constituent of the GeoConnections program which, to succeed, must be supported by an enabling contractual framework. Allowing for the formation of licence agreements electronically should therefore be encouraged, when appropriate.

#### **5.3.1 Legal Developments**

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<sup>55</sup> For example, where departmental imperatives warrant it, a non-compete clause, prohibiting a licensee from developing products containing licensed government data which compete with the department's own products, may be added to the appended model value-added reseller agreement. Such a non-compete clause may provide as follows: "The Value-Added Reseller shall within thirty (30) days of the development and/or manufacture of any and all VAR Product, and prior to their distribution, provide to Canada, at no cost to it, two (2) sample copies of the VAR Product in English, and two (2) sample copies in French, if applicable. Canada will thereupon make a determination as to whether the VAR Products unreasonably compete with Canada's own products, in which affirmative case the Value-Added Reseller will promptly effect, at its own costs, all modifications to the VAR Products, as deemed necessary by Canada, acting reasonably".

Thousands of online agreements are concluded daily. However, parties will often disagree as to whether a valid and enforceable contract exists so as to bind them contractually.

Generally, the same traditional legal criteria required to create an enforceable off-line contract apply to on-line contracts. Basically, for there to be a binding contract under Canadian law, the following elements must be established:

- the parties intend to create legal relations when entering into the agreement;
- one party to the contract has made an offer;
- there has been an unequivocal acceptance of the offer by the offeree, and communication of that acceptance to the offeror;
- the contract is supported by consideration;
- the essential terms of the contract are certain; and
- the parties to the agreement have the legal capacity to enter into the transaction.

Generally speaking, under Canadian law, a contract may be formed by any means of communication. Courts have confirmed the binding nature of contractual offers or acceptances communicated by telephone, fax, e-mails, etc. Accordingly, except in situations of statutorily required formalities (such as in the case of wills, for instance), the digital nature of a communication should not be the basis for refusing to recognize the binding nature of an agreement negotiated electronically. As stated by a leading legal scholar and practitioner on computer, electronic commerce and internet law:

...the focus of whether a contract has been formed electronically should be on whether the electronic means used to contract satisfy long-standing contract principles. This requirement was aptly expressed by a United States District Court Judge Alvin Hellerstein in the *Specht v. Netscape*, in the following statement:

"Promises become binding when there is a meeting of the minds and consideration is exchanged. So it was at King's Bench in common law England; so it was under the common law in the American colonies; so it was through more than two centuries of jurisprudence in this country; and so it is today. Assent may be registered by a signature, a handshake, or a click of a computer mouse transmitted across the invisible ether of the Internet. Formality is not a requisite: any sign, symbol or action or even willful inaction, as long as it is unequivocally referable to the promise, may create a contract." <sup>56</sup>

Hence, historically, courts have ruled that communication of acceptance requires a positive action undertaken by the accepting party. However, recent decisions seem to indicate a tendency to recognize acceptance in much more tacit or implicit acts performed by Internet users.

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<sup>56</sup> Sookman, Computer, Internet and Electronic Commerce Law, 2000 (loose-leaf) Carswell: Toronto, p 10-14.

There are essentially two (2) types of electronic contracts: click-wrap agreements and web-wrap agreements<sup>57</sup>.

### **5.3.1.1 Click-Wrap Agreements**

Click-wrap agreements usually require the Internet user to undertake some kind of positive action, normally by clicking in the “I ACCEPT” box, or something to that effect. Above this box will usually be listed all the terms of the agreement, in order to ensure that the accepting party has had sufficient opportunity to review and understand them. Such agreements have normally been upheld, both in Canada and the United States. These are also referred to as “click-and-accept” agreements. In *Rudder v. Microsoft Corp.*,<sup>58</sup> the Court found that the click-wrap agreement in question in that case “must be afforded the sanctity that must be given to any agreement in writing.”

### **5.3.1.2 Web-Wrap Agreements (Terms of Use)**

Web-wrap agreements do not require the user to take any action to express consent. Rather, web-wrap agreements typically infer the user’s consent to, for instance, terms and conditions of a website. Merely browsing or visiting a webpage may be sufficient to communicate assent to the terms of the agreement. In some circumstances, the downloading of website content may also constitute valid communication of acceptance. Web-wrap agreements often times take the form of online terms and conditions, which are displayed at a site and which are encountered during a user's use of the site.

Leading Canadian cases on the enforceability of web-wrap agreements include: *Kanitz v. Rogers Cable Inc.*,<sup>59</sup> where the Court found that the plaintiff’s familiarity with the Internet was deemed a relevant factor in ruling on the binding nature of the on-line agreement, even though the plaintiffs had not pressed any “I agree” button; *Dell Computer Corp. v. Union des consommateurs*,<sup>60</sup> in which the Supreme Court of Canada confirmed the enforceability of an arbitration clause that was accessible via a link on the website’s navigation bar; *Canadian Real Estate Assoc. c. Sutton (Québec) Real Estate Services Inc.*,<sup>61</sup> in which the Court, at the interlocutory stage, found that the defendant, by downloading the materials, assented to the terms of use included under a separate link and section of the plaintiff’s website.

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<sup>57</sup> “Web-wrap agreements are also referred to as “browse-wrap agreements”.

<sup>58</sup> [1999] O.J. no. 3778, 2 C.P.R. (4th) 474, at para. 17.

<sup>59</sup> (2002), 58 O.R. (3d) 299 (Ont. Sup. Ct.).

<sup>60</sup> 2007 SCC 34.

<sup>61</sup> 2003 CanLII 22519 (QC C.S.).

### 5.3.2 Common Approach

Web-based distribution of government geographic data is the cornerstone of the GeoConnections program and one of the foundational elements of the Canadian Geospatial Data Infrastructure, to be supported by an enabling contractual framework.

Web-based distribution of government geographic data is appropriate where the stated objective of a dissemination activity is to promote widest use possible of the licensed government geographic data, with no restrictions on further distribution. Of the six (6) model template licence agreements recommended in this *Guide to Best Practices* in support of the four (4) distribution models for the dissemination of government geographic data, only the No-Fee Unrestricted Use Licence (actually termed the Non-Fee Unrestricted Use Web-Wrap Licence Agreement – see Schedule “A”) is suitable for web-wrap electronic contracting, given:

- the non-sensitive nature of the government geographic data disseminated under the Unrestricted Use model (non-sensitive from a policy and legal perspective);
- the absence of restrictions on use of the licensed government geographic data;
- the absence of reporting obligations on the part of the licensee;
- the absence of payment obligations on the part of the licensee; and
- that this distribution model represents a low risk of liability attaching to the Crown.

A web-based distribution, at no fee, of government geographic data is therefore an acceptable mode of distribution provided it is effected within the parameters articulated in the recommended model template No-Fee Unrestricted Use Web-Wrap Licence Agreement.

With respect to web-based distribution on a fee basis, it is acknowledged that such could occur within terms contained in click-wrap agreements. However, policy, contract and risk management imperatives suggest that, in the context of an integrated approach to the licensing of government geographic data, Fee-Based licence agreements for the licensing of government geographic data be entered into using traditional methods of contracting. The delivery of the licensed government geographic data may, however, be done electronically, after signature of the applicable licence agreement.

## CHAPTER 6 THE WAY FORWARD

The integrated framework for the licensing of government geographic data presented in this *Guide to Best Practices* is the result of extensive discussion by government data licensing practitioners, users and industry. These discussions were driven by a common desire to develop ways in which to further improve the use and benefit of government geographic data by streamlining government data licensing. Strong participation by government licensing practitioners throughout this process has been key, as the results of the discussions must be considered as being sustainable within current policy and operational environments.

This *Guide to Best Practices* addresses matters of keen interest to all involved in the creation, licensing and use of government geographic data; matters which, for the most part, have been brought to the forefront of the geographic data licensing community as a result of the rapid development and technological advances in the field of web-based services, distributed computing and other user applications.

Technological advances, coupled with the evolutionary nature of government data dissemination policy, will continue to impact on the models of distribution adopted by government for the dissemination of its geographic data. Geospatial web services and the rise of mainstream commercial services such as Google Maps are clearly on the rise, leading toward a rapid growth in the use of geospatial data and services by a broader audience and creating interesting opportunities for producers, disseminators and users of geospatial data, while, at the same time, giving rise to policy, legal and technological challenges touching on issues such as the security of data holdings and privacy concerns.

Governmental data dissemination policy and practices will need to be responsive to the evolutionary nature of data distribution models. Continued broad-based discussions within government and with industry and academic sectors, the sharing of best practices, the sharing of knowledge, all driven by a common desire to develop ways to further improve the use and benefit of geomatics data is therefore crucial to ensure that government geographic data licensing practices is, and continues to be, of broad benefit to all parties, and for all sectors of Canadian society.

The continued refinement of *The Dissemination of Government Geographic Data in Canada: Guide to Best Practices* is a collaborative process. We rely on the reader's input to suggest progressive improvements to the *Guide to Best Practices* so that it remains a valuable information asset for the geospatial data licensing community. Please use the Feedback Form provided at Appendix I to propose changes for consideration in the preparation of subsequent versions.



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## APPENDIX A

### No-Fee Unrestricted Use Web Wrap Licence Agreement for Government Geographic Data

(ON-LINE CONTRACT)

This licence agreement is between Her Majesty the Queen in Right of Canada, as represented by the Minister of \_\_\_\_\_ (Canada) and you.

***THE FOLLOWING ARE TERMS AND CONDITIONS GOVERNING YOUR USE OF THIS DATA. BY BROWSING THROUGH, DOWNLOADING, ACCESSING OR OTHERWISE USING THIS DATA, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS SET OUT BELOW. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY NOT BROWSE THROUGH, DOWNLOAD, ACCESS OR OTHERWISE USE THIS DATA.***

***CANADA MAY MODIFY THIS AGREEMENT AT ANY TIME, AND SUCH MODIFICATIONS SHALL BE EFFECTIVE IMMEDIATELY UPON POSTING OF THE MODIFIED AGREEMENT ON THE \_\_\_\_\_ SITE (name the site and give the URL). YOUR CONTINUED ACCESS OR USE OF THIS DATA SHALL BE DEEMED YOUR CONCLUSIVE ACCEPTANCE OF THE MODIFIED AGREEMENT.***

#### **BACKGROUND:**

1. Canada is the owner, or licensee, of Intellectual Property Rights in and to Canada Digital Data, as described in Schedule "A" attached hereto;
2. You are interested in acquiring certain rights to the Canada Digital Data, in accordance with the terms and conditions contained herein; and
3. Canada is willing to grant you certain rights to the Canada Digital Data, in accordance with the terms and conditions contained herein;

#### **1.0 DEFINITIONS**

- 1.1 **"Agreement"** means this no-fee unrestricted use web wrap licence agreement, its recitals

and schedules.

1.2 **“Canada’s Data”** means that Data contained in the Canada Digital Data, the Intellectual Property Rights of which vest in Canada.

1.3 **“Canada Digital Data”** means the digital Data, metadata and related documentation described in Schedule “A” attached hereto, provided by Canada to you in accordance with the terms and conditions of this Agreement. Canada’s Data is contained in the Canada Digital Data. Canada Digital Data may also contain Data the Intellectual Property Rights of which vest with third parties, and which is licensed to Canada.

1.4 **“Data”** means any expressed original data fixed in a form giving rise to Intellectual Property Rights, such as described in Schedule “A” attached hereto.

1.5 **“Intellectual Property Rights”** means any and all intellectual property rights recognized by the law, including but not limited to, intellectual property rights protected through legislation.

1.6 **“Value-Added Product”** means any product, system, sub-system, device, component, material or software you develop or manufacture, or cause to be developed or manufactured, in the exercise of your rights under this Agreement. Value-Added Products may be developed or manufactured by constructing, deriving, developing, adapting, incorporating or by any other means using the Canada Digital Data, in whole or in part.

## **2.0 INTELLECTUAL PROPERTY RIGHTS**

2.1 Subject to section 2.2 hereof, and without affecting Canada’s Intellectual Property Rights in and to Canada’s Data and any third-party’s Intellectual Property Rights in Data contained in the Canada Digital Data, all Intellectual Property Rights in and to any modification, translation or further development made by you to the Canada Digital Data in the exercise of your rights under this Agreement shall vest in you or in such person as you shall decide.

2.2 All Intellectual Property Rights in Canada’s Data shall remain the property of Canada. All Intellectual Property Rights in Data contained in the Canada Digital Data which is not Canada’s Data shall remain the property of the respective content owners and may be protected by copyright, other intellectual property laws, common law or international treaties.

## **3.0 LICENCE GRANT**

3.1 Subject to this Agreement, Canada hereby grants you a royalty-free, non-exclusive, world-wide, non-assignable licence to use, reproduce, extract, modify, translate, further develop and distribute the Canada Digital Data, and to manufacture and license Value-Added Products, and to sublicense any or all of such rights, PROVIDED:

(a) all reproductions of the Canada Digital Data shall include the notice provided in section 4.1 and shall carry the caveat contained in section 6.1 hereof;

(b) all distributions of Value-Added Products and of the Canada Digital Data, in whole or in part, and any sublicense by you of your rights hereunder, shall be evidenced by a written agreement consistent with this Agreement and containing the terms and conditions set out in Schedule “B” attached hereto; and

(c) you shall not disassemble, decompile except for the specific purpose of recompiling for software compatibility, or in any way attempt to reverse engineer the Canada Digital Data or any part thereof, and you shall not merge or link the Canada Digital Data with any product or database in such a fashion that gives the appearance that you may have received or had access to, information held by Canada about any identifiable individual, family, household, organization or business.

#### **4.0 PROTECTION AND ACKNOWLEDGEMENT OF SOURCE**

4.1 You shall include and maintain on all reproductions of the Canada Digital Data, produced pursuant to section 3 above, the following notice:

*Reproduced and distributed with the permission of \_\_\_\_\_ (applied title of the department)*

4.2 Where any of the Canada Digital Data is contained within a Value-Added Product, you shall include in a prominent location on such Value-Added Product the following notice:

*This product has been produced by or for (your name – or corporate name, if applicable) and includes data provided by \_\_\_\_\_ (applied title of the department)*

*The incorporation of data sourced from \_\_\_\_\_ (applied title of the department) within this product shall not be construed as constituting an endorsement by \_\_\_\_\_ (applied title of the department) of our product.*

or any other notice approved in writing by Canada.

4.3 You shall ensure that no acknowledgment of Canada, except as permitted under sections 4.1 and 4.2 above, shall be shown in association with any form of promotion or advertisement of Value-Added Products. You shall not include in your promotional material:

(a) the name, crest, logos, flags or other insignia or domain names of Canada, without the prior written approval of Canada, which approval may be refused at Canada’s sole discretion; or



(b) any annotation of any kind that may be interpreted as an endorsement by Canada of the Value-Added Products.

**5.0 YOUR OBLIGATIONS**

5.1 You shall promptly notify Canada of any infringement by third parties of the Canada Digital Data when such becomes known to you. Where possible, you will provide a sample of such infringement and co-operate with Canada in enforcing Canada’s Intellectual Property Rights against the infringer. You shall not institute any suit or take any action on account of any such infringements without Canada’s prior written consent.

5.2 You shall not use any identifier or mark of Canada, or the name of \_\_\_\_\_ (applied title of the department) in a manner that would imply that you have an exclusive distribution arrangement for any or all of the Canada Digital Data, or that you have access to any confidential information or information not available to any other party.

5.3 You shall not use the Canada Digital Data in any way which, in the opinion of Canada, may bring disrepute to or prejudice the reputation of Canada.

5.4 You shall supply to Canada, prior to its use or publication, a copy of all recommended marketing and promotional literature that identifies the Canada Digital Data or refers to the relationship between you and Canada. Canada shall notify you of any required changes within seven (7) days of receipt of the materials. You shall make all changes to such materials as Canada, in its sole discretion, deems advisable.

**6.0 REPRESENTATIONS, WARRANTIES, INDEMNITIES**

6.1 CANADA MAKES NO REPRESENTATION AND GIVES NO WARRANTY OF ANY KIND WITH RESPECT TO THE ACCURACY, USEFULNESS, NOVELTY, VALIDITY, SCOPE, COMPLETENESS OR CURRENCY OF THE CANADA DIGITAL DATA AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE CANADA DIGITAL DATA.

6.2 YOU SHALL HAVE NO RECOURSE AGAINST CANADA, WHETHER BY WAY OF ANY SUIT OR ACTION OR OTHER, FOR ANY LOSS, LIABILITY, DAMAGE OR COST THAT YOU MAY SUFFER OR INCUR AT ANY TIME, BY REASON OF YOUR POSSESSION OR USE OF THE CANADA DIGITAL DATA, OR ARISING OUT OF THE EXERCISE OF YOUR RIGHTS OR THE FULFILMENT OF YOUR OBLIGATIONS HEREUNDER.

6.3 YOU SHALL AT ALL TIMES INDEMNIFY AND HOLD CANADA AND ITS MINISTERS, EMPLOYEES AND AGENTS HARMLESS FROM ALL CLAIMS,



DEMANDS, LOSSES, DAMAGES, COSTS, ACTIONS OR OTHER PROCEEDINGS MADE, SUSTAINED, BROUGHT OR PROSECUTED BY ANY PERSON IN ANY MANNER, BASED UPON, OR OCCASIONED BY, OR ATTRIBUTED TO ANY INJURY, INFRINGEMENT OR DAMAGE ARISING OUT OF ANY OF YOUR ACTIONS OR OMISSIONS, ARISING FROM ERRONEOUS COMMUNICATION MADE BY YOU, OR ARISING FROM YOUR PERFORMANCE OR NON-PERFORMANCE OF YOUR RIGHTS AND OBLIGATIONS HEREUNDER OR ARISING FROM THE MANUFACTURE, PUBLICATION, DISTRIBUTION OR THE USE OF VALUE-ADDED PRODUCTS.

## **7.0 EFFECTIVE DATE AND TERMINATION**

7.1 This Agreement is effective as of the date and time you download, access or otherwise use the Canada Digital Data and shall remain in effect until terminated, as provided in section 7.2.

7.2 This Agreement terminates automatically and your rights under section 3.0 shall immediately be revoked if you breach any of the terms and conditions of this Agreement.

7.3 Notwithstanding termination of this Agreement:

(a) you may continue to distribute Value-Added Products for the purpose of completing orders made before the termination of this Agreement, provided you continue to comply with the requirements to protect and acknowledge the source, as required under section 4.0 and the requirements set out in Schedule “B” attached hereto; and

(b) you continue to be bound by all agreements that you have entered into in the exercise of your rights under this Agreement prior to the termination.


7.4 All obligations which expressly or by their nature survive termination of this Agreement shall continue in full force and effect. For greater clarity, and without limiting the generality of the foregoing, the following provisions survive expiration or termination of this Agreement:

- (a) section 4.0 (*Protection and Acknowledgement Of Source*)
- (b) section 6.0 (*Representations, Warranties and Indemnities*);
- (c) section 7.3 (a) and (b)

## **8.0 GENERAL PROVISIONS**

8.1 Applicable Law

This Agreement shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws in effect in the Province of Ontario, and the laws of



Canada, as applicable.

## 8.2 Entire Agreement

This Agreement, including the recitals and Schedules “A” and “B” constitute the entire agreement between Canada and you with respect to your rights to browse through, download, access or otherwise use the Canada Digital Data and supersedes any prior agreement or communication of any kind between Canada and you. This Agreement may be amended by Canada, in the manner set out at the beginning of this Agreement.

## 8.3 No Waiver

No condoning, excusing or overlooking by Canada of any default by you, at any time or times, in performing or observing any of your obligations hereunder, will operate as a waiver, renunciation, surrender of or otherwise affect the rights of Canada in respect of any continuing or subsequent default. No waiver of these rights will be inferred from anything done or omitted by Canada except by an express waiver in writing.

## 8.4 Order of Precedence

If there is a conflict or ambiguity between this Agreement and any schedules thereto, this Agreement shall prevail.

## 8.5 No Authority to Bind

The Parties expressly disclaim any intention to create a partnership, joint venture or joint enterprise. You acknowledge and agree that nothing contained in this Agreement nor any acts of Canada shall constitute or be deemed to constitute you and Canada as partners, joint venturers or principal and agent in any way or for any purpose. You do not have the authority to act for, or to assume any obligation or responsibility on behalf of Canada.

## 8.6 No updates

Canada assumes no obligation or liability whatsoever for the provision of updates to the Canada Digital Data.



**SCHEDULE “A”  
to the No-Fee Unrestricted Use Web Wrap Licence Agreement**

**DESCRIPTION OF CANADA DIGITAL DATA**

**SCHEDULE “B”  
to the No-Fee Unrestricted Use Web Wrap Licence Agreement**

**You shall include these terms and conditions in all agreements you enter into with third parties for:**

- 1) the distribution of Value-Added Products; and**
- 2) whenever you are sublicensing any or all of the rights granted to you under section 3.1 of this No-Fee Unrestricted Use Web Wrap Licence Agreement**

**For ease of reference and unless otherwise indicated, capitalized words contained in this Schedule have the meaning ascribed to them in the No-Fee Unrestricted Use Web Wrap Licence Agreement.**

**The word “Customer”, as used below, refers to the customer with whom you are entering into an agreement for the distribution of Value-Added Products or a licence agreement. You may replace in your own agreements the word “Customer” with an equivalent term.**

**TERMS TO BE INCLUDED IN YOUR AGREEMENTS FOR THE DISTRIBUTION OF VALUE-ADDED PRODUCTS YOU HAVE DEVELOPED:**

1. Her Majesty the Queen in Right of Canada (“Canada”) is the owner, or a licensee, of Intellectual Property Rights in \_\_\_\_\_ [*insert product name*]; and has licensed to \_\_\_\_\_ (your name) certain rights to such intellectual property, including the right to sublicense it to third parties, on certain terms and conditions. With payment of the requisite fee (where applicable), Customer is hereby granted a non-exclusive, world-wide, non-assignable licence to exercise such of Canada’s Intellectual Property Rights in \_\_\_\_\_ [*insert product name*] as is necessary for Customer to use, reproduce, extract, modify, translate, further develop and further distribute \_\_\_\_\_ [*insert product name*], and as is necessary for Customer to manufacture and distribute products that Customer may develop by constructing, deriving, developing, adapting, incorporating or by any other means using \_\_\_\_\_ [*insert product name*], in whole or in part.

2. Customer shall include on all products Customer develops or causes to be developed in the exercise of Customer’s rights under section 1 above, in a prominent location, the following notice:

*This product has been produced by or for \_\_\_\_\_ (Customer’s name) and includes data provided by \_\_\_\_\_ (applied title of the department)*

*The incorporation of data sourced from \_\_\_\_\_ (applied title of the department) within this product shall not be construed as constituting an endorsement by \_\_\_\_\_ (applied title of the department).*

3. All copyright, other proprietary notices of Canada and metadata appearing on or incorporated into \_\_\_\_\_ [insert product name], as well as any and all conditions of use associated with \_\_\_\_\_ [insert product name], shall be incorporated and maintained on all reproductions of \_\_\_\_\_ [insert product name].

4. Customer shall not disassemble, decompile except for the specific purpose of recompiling for software compatibility, or in any way attempt to reverse engineer \_\_\_\_\_ [insert product name] or any part thereof.

5. Customer shall not merge or link \_\_\_\_\_ [insert product name] with any product or database in such a fashion that gives the appearance that Customer may have received, or had access to, information held by Canada about any identifiable individual, family, household, organization or business.

6. \_\_\_\_\_ [INSERT PRODUCT NAME] IS PROVIDED ON AN ‘AS-IS’ BASIS. CUSTOMER ACKNOWLEDGES AND AGREES THAT CANADA HAS MADE NO REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE ACCURACY, USEFULNESS, NOVELTY, VALIDITY, SCOPE, COMPLETENESS OR CURRENCY OF \_\_\_\_\_ [INSERT PRODUCT NAME] OR ANY ELEMENTS THEREIN CONTAINED AND HAS EXPRESSLY DISCLAIMED ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF \_\_\_\_\_[INSERT PRODUCT NAME].

7. CUSTOMER SHALL HAVE NO RECOURSE AGAINST CANADA, WHETHER BY WAY OF ANY SUIT OR ACTION OR OTHER, FOR ANY LOSS, LIABILITY, DAMAGE OR COST THAT CUSTOMER MAY SUFFER OR INCUR AT ANY TIME, BY REASON OF CUSTOMER’S POSSESSION OR USE OF \_\_\_\_\_ [INSERT PRODUCT NAME].

**TERMS TO BE INCLUDED WHERE YOU ARE LICENSING TO A THIRD PARTY ALL OF THE RIGHTS THAT CANADA HAS GRANTED TO YOU**

1. Her Majesty the Queen in Right of Canada (“Canada”) is the owner, or a licensee, of Intellectual Property Rights in \_\_\_\_\_ (the “Canada Digital Data”); and has licensed to \_\_\_\_\_ (your name) certain rights to the Canada Digital Data, including the right to sublicense those rights to third parties, on certain terms and conditions.

2. With payment of the requisite fee (where applicable), Customer is hereby granted a non-exclusive, world-wide, non-assignable licence to use, reproduce, extract, modify, translate, further develop, distribute the Canada Digital Data, and to manufacture or cause to be manufactured and distributed products Customer develops by constructing, deriving, developing, adapting, incorporating or by any other means using the Canada Digital Data, in whole or in part, PROVIDED Customer includes and maintains on all reproductions of the Canada Digital Data, as well as all metadata that was provided by \_\_\_\_\_ (your name) with the Canada Digital Data, the following notice:

*Reproduced and distributed with the permission of \_\_\_\_\_ (Your name), authorized licensee of \_\_\_\_\_ (applied title of the department)*

3. Customer shall include on all products Customer develops or causes to be developed in the exercise of Customer's rights under section 2 above, in a prominent location, the following notice:

*This product has been produced by or for \_\_\_\_\_ (Customer's name) and includes data provided by \_\_\_\_\_ (applied title of the department)*

*The incorporation of data sourced from \_\_\_\_\_ (applied title of the department) within this product shall not be construed as constituting an endorsement by \_\_\_\_\_ (applied title of the department).*

4. All copyright, other proprietary notices of Canada and metadata appearing on or incorporated into the Canada Digital Data, as well as any and all conditions of use associated with the Canada Digital Data, shall be incorporated and maintained on all reproductions thereof.

5. Customer shall not disassemble, decompile or in any way attempt to reverse engineer the Canada Digital Data or any part thereof.

6. Customer shall not merge or link the Canada Digital Data with any product or database in such a fashion that gives the appearance that Customer may have received, or had access to, information held by Canada about any identifiable individual, family, household, organization or business.

7. CUSTOMER ACKNOWLEDGES AND AGREES THAT CANADA HAS MADE NO REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE ACCURACY, USEFULNESS, NOVELTY, VALIDITY, SCOPE, COMPLETENESS OR CURRENCY OF THE CANADA DIGITAL DATA AND HAS EXPRESSLY DISCLAIMED ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE CANADA DIGITAL DATA.

8. CUSTOMER SHALL HAVE NO RECOURSE AGAINST CANADA, WHETHER BY WAY OF ANY SUIT OR ACTION OR OTHER, FOR ANY LOSS, LIABILITY, DAMAGE OR COST THAT CUSTOMER MAY SUFFER OR INCUR AT ANY TIME, BY REASON OF CUSTOMER'S POSSESSION OR USE OF THE CANADA DIGITAL DATA.

**APPENDIX B**

**Fee-Based Unrestricted Use Licence  
Agreement For Government Geographic Data**

**This licence agreement**

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
as represented by the Minister of \_\_\_\_\_, (“Canada”)**

**AND:**

\_\_\_\_\_ (“Licensee”)

**[WHERE IT IS KNOWN TO CANADA THAT THE LICENSEE IS A CORPORATION, INCLUDE AFTER THE FULL CORPORATE NAME OF THE LICENSEE THE FOLLOWING: “a corporation incorporated under the laws of \_\_\_\_\_, having its head office in \_\_\_\_\_”]**

**WITNESSES THAT:**

**I. WHEREAS** Canada is the owner, or licensee, of Intellectual Property Rights in and to Canada Digital Data, as described in Schedule “A” attached hereto;

**II. AND WHEREAS** the Licensee is interested in acquiring certain rights to the Canada Digital Data, in accordance with the terms and conditions contained herein; and

**III. AND WHEREAS** Canada is willing to grant to the Licensee certain rights to the Canada Digital Data, in accordance with the terms and conditions contained herein;

**NOW THEREFORE,** in consideration of the covenants contained in this Agreement, the parties agree as follows:

**1.0 DEFINITIONS**

1.1 **“Agreement”** means this Fee-Based unrestricted use licence agreement, its recitals and all schedules attached hereto, as the same may be amended from time to time in accordance with the

provisions hereof.

1.2 **“Canada’s Data”** means that Data contained in the Canada Digital Data, the Intellectual Property Rights of which vest in Canada.

1.3 **“Canada Digital Data”** means the digital Data, metadata and related documentation described in Schedule “A” attached hereto, provided by Canada to the Licensee in accordance with the terms and conditions of this Agreement. Canada’s Data is contained in the Canada Digital Data. Canada Digital Data may also contain Data, the Intellectual Property Rights of which vest with third parties, and which is licensed to Canada.

1.4 **“Data”** means any expressed original data fixed in a form giving rise to Intellectual Property Rights, such as described in Schedule “A” attached hereto.

1.5 **“Intellectual Property Rights”** means any and all intellectual property rights recognized by the law, including but not limited to, intellectual property rights protected through legislation.

1.6 **“Party”** means either one of the signatories to this Agreement and includes their respective servants, agents and employees. **“Parties”** means the signatories to this Agreement and includes their respective servants, agents and employees.

1.7 **“Value-Added Product”** means any product, system, sub-system, device, component, material or software developed or manufactured, or caused to be developed or manufactured, by the Licensee in the exercise of its rights under this Agreement. Value-Added Products may be developed or manufactured by constructing, deriving, developing, adapting, incorporating or by any other means using the Canada Digital Data, in whole or in part.

## **2.0 INTELLECTUAL PROPERTY RIGHTS**

2.1 Subject to section 2.2 hereof, and without affecting Canada’s Intellectual Property Rights in and to Canada’s Data and any third-party’s Intellectual Property Rights in Data contained in the Canada Digital Data, all Intellectual Property Rights in and to any modification, translation or further development made by the Licensee to the Canada Digital Data in the exercise of the Licensee’s rights under this Agreement shall vest in the Licensee or in such person as the Licensee shall decide.

2.2 All Intellectual Property Rights in and to Canada’s Data shall remain the property of Canada. All Intellectual Property Rights in and to the Data contained in the Canada Digital Data which is not Canada’s Data shall remain the property of the respective content owners and may be protected by copyright, other intellectual property laws, common law or international treaties.

## **3.0 LICENCE GRANT**



3.1 Subject to this Agreement, and in consideration for the payment of royalties as provided hereunder, Canada hereby grants to the Licensee a royalty-bearing, non-exclusive, world-wide, non-assignable licence to use, reproduce, extract, modify, translate, further develop and distribute the Canada Digital Data, and to manufacture and license Value-Added Products, and to sublicense any or all of such rights, for the whole of the period of time described in section 8 (*Term*) below, PROVIDED:

(a) all reproductions of the Canada Digital Data shall include the notice provided in section 4.1 and shall carry the caveat contained in section 7.1 hereof;

(b) all distributions of Value-Added Products and of the Canada Digital Data, in whole or in part, and any sublicense by the Licensee of its rights hereunder, shall be evidenced by a written agreement consistent with this Agreement and containing the terms and conditions set out in Schedule "C" attached hereto; and

(c) the Licensee shall not disassemble, decompile except for the specific purpose of recompiling for software compatibility, or in any way attempt to reverse engineer the Canada Digital Data or any part thereof, and the Licensee shall not merge or link the Canada Digital Data with any product or database in such a fashion that gives the appearance that the Licensee may have received or had access to, information held by Canada about any identifiable individual, family, household, organization or business.

#### **4.0 PROTECTION AND ACKNOWLEDGEMENT OF SOURCE**

4.1 The Licensee shall include and maintain on all reproductions of the Canada Digital Data, produced pursuant to section 3 above, as well as all metadata that was provided by Canada with the Canada Digital Data, the following notice:

*Reproduced and distributed with the permission of \_\_\_\_\_ (applied title of the department)*

4.2 Where any of the Canada Digital Data is contained within a Value-Added Product, the Licensee shall include in a prominent location on said Value-Added Product the following notice:

*This product has been produced by or for (name of the Licensee) and includes data provided by \_\_\_\_\_ (applied title of the department)*

*The incorporation of data sourced from \_\_\_\_\_ (applied title of the department) within this product shall not be construed as constituting an endorsement by \_\_\_\_\_ (applied title of the department) of our product.*

or any other notice approved in writing by Canada.

4.3 The Licensee shall ensure that no acknowledgment of Canada, except as permitted under sections 4.1 and 4.2 above, shall be shown in association with any form of promotion or advertisement of Value-Added Products. The Licensee shall not include in its promotional material:

(a) the name, crest, logos, flags or other insignia or domain names of Canada, without the prior written approval of Canada, which approval may be refused at Canada's sole discretion; or

(b) any annotation of any kind that may be interpreted as an endorsement by Canada of the Value-Added Products.

## **5.0 FEES, ROYALTIES AND REPORTING**

5.1 The Licensee shall pay to Canada the fees and/or royalties prescribed in Schedule "B" attached hereto and comply with all requirements therein set out.

## **6.0 OBLIGATIONS OF THE LICENSEE**

6.1 The Licensee shall exercise due care, skill and diligence in exercising its rights hereunder and in distributing or otherwise making the Canada Digital Data available.

6.2 The Licensee shall promptly notify Canada of any infringement by third parties of the Canada Digital Data when such becomes known to the Licensee and where possible provide a sample of such infringement and co-operate with Canada in enforcing Canada's Intellectual Property Rights against the infringer. The Licensee shall not institute any suit or take any action on account of any such infringements without Canada's prior written consent.

6.3 The Licensee shall not use any identifier or mark of Canada, or the name of \_\_\_\_\_ (*applied title of the department*) in a manner that would imply that the Licensee has an exclusive distribution arrangement for any or all of the Canada Digital Data, or that the Licensee has access to any confidential information or information not available to any other party.

6.4 The Licensee shall not use the Canada Digital Data in any way which, in the opinion of Canada, may bring disrepute to or prejudice the reputation of Canada.

6.5 The Licensee shall supply to Canada, prior to its use or publication, a copy of all recommended marketing and promotional literature that identifies the Canada Digital Data or refers to the relationship between the Licensee and Canada. Canada shall notify the Licensee of any required changes within seven (7) days of receipt of the materials. The Licensee shall make all changes to such materials as Canada, in its sole discretion, deems advisable.

6.6 The Licensee shall promptly notify Canada of any action or proceeding or any event that may affect its ability and capacity to exercise its licensed rights and fulfill its obligations under this Agreement.

## **7.0 REPRESENTATIONS, WARRANTIES, INDEMNITIES**

7.1 CANADA MAKES NO REPRESENTATION AND GIVES NO WARRANTY OF ANY KIND WITH RESPECT TO THE ACCURACY, USEFULNESS, NOVELTY, VALIDITY, SCOPE, COMPLETENESS OR CURRENCY OF THE CANADA DIGITAL DATA AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE CANADA DIGITAL DATA.

7.2 THE LICENSEE SHALL HAVE NO RECOURSE AGAINST CANADA, WHETHER BY WAY OF ANY SUIT OR ACTION OR OTHER, FOR ANY LOSS, LIABILITY, DAMAGE OR COST THAT THE LICENSEE MAY SUFFER OR INCUR AT ANY TIME, BY REASON OF THE LICENSEE'S POSSESSION OR USE OF THE CANADA DIGITAL DATA, OR ARISING OUT OF THE EXERCISE OF ITS RIGHTS OR THE FULFILMENT OF ITS OBLIGATIONS HEREUNDER.

7.3 THE LICENSEE SHALL AT ALL TIMES INDEMNIFY AND HOLD CANADA AND ITS MINISTERS, EMPLOYEES AND AGENTS HARMLESS FROM ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, COSTS, ACTIONS OR OTHER PROCEEDINGS MADE, SUSTAINED, BROUGHT OR PROSECUTED BY ANY PERSON IN ANY MANNER, BASED UPON, OR OCCASIONED BY, OR ATTRIBUTED TO ANY INJURY, INFRINGEMENT OR DAMAGE ARISING OUT OF ANY ACTION OR OMISSION OF THE LICENSEE, ARISING FROM ERRONEOUS COMMUNICATION BY THE LICENSEE, OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE BY THE LICENSEE OF ITS RIGHTS AND OBLIGATIONS HEREUNDER OR ARISING FROM THE MANUFACTURE, PUBLICATION, DISTRIBUTION OR THE USE OF VALUE-ADDED PRODUCTS.

## **8.0 TERM**

8.1 This Agreement is effective as of the date of the last signature of the Parties and shall remain in effect for a period of \_\_\_\_ (\_\_\_) year(s), subject to sections 8.2 and 9.0 below.

8.2 Provided the Licensee is not in breach of any of the terms and conditions of this Agreement at the end of the term, this Agreement shall be automatically renewed for successive one (1) year terms, subject to section 9.0 below, unless either Party gives written notice to the other Party of the non-renewal of this Agreement at least thirty (30) days prior to the end of the then-current term.

## 9.0 TERMINATION

9.1 Notwithstanding section 8.0 above, this Agreement may be terminated prior to its expiration:

(a) automatically, upon Canada giving thirty (30) days written notice to the Licensee of termination of the Agreement by reason of default, if the Licensee commits or permits a breach of any of the terms and conditions of this Agreement;

(b) upon written notice of termination given by either Party at any time, and such termination shall take effect thirty (30) days after the receipt by the other Party of such notice; or

(c) upon written agreement of the Parties.

9.2 Upon the expiration or termination of this Agreement, for whatever reason, the obligations of Canada hereunder shall immediately cease, the Licensee's rights under section 3.0 hereof shall immediately cease, and the Licensee shall:

(a) return immediately to Canada the Canada Digital Data and all reproductions thereof that have not been incorporated into Value-Added Products prior to the date of expiration or termination of this Agreement, and certify in writing to Canada, within thirty (30) days of expiration or termination, that all of such Canada Digital Data has been returned to Canada;

(b) deliver a detailed statement to Canada of the inventory of the Value-Added Products in development or in existence but not yet, as of the date of expiration or termination of this Agreement, distributed by the Licensee;

(c) if requested by Canada, dispose of any remaining Canada Digital Data and Value-Added Products inventory, subject always to any obligations under section 5.0 of this Agreement (FEES, ROYALTIES and REPORTING);

(d) deliver to Canada the relevant sales reports as prescribed in Schedule "B" attached hereto; and

(e) deliver to Canada all royalties and other monies payable under this Agreement, up to and including the date of expiration or termination of this Agreement.

9.3 Notwithstanding section 9.2 above, the Licensee may, with the prior written approval of Canada, which approval shall be at Canada's sole discretion, continue to distribute Value-Added Products for the purpose of completing orders made before the expiration or termination date of this Agreement, provided the Licensee shall:

(a) continue to pay royalties as required under section 5.0 and Schedule "B" attached hereto

for any Value-Added Product distributed by the Licensee after expiration or termination of this Agreement, within seven (7) days of the liability being incurred;

(b) continue to comply with the requirements to protect and acknowledge the source, as required under section 4.0 and the requirements set out in Schedule “C” attached hereto; and

(c) continue to fulfill its reporting obligations set out in Schedule “B” attached hereto.

9.4 Notwithstanding the expiration or termination of this Agreement, all agreements entered into prior to such expiration or termination by the Licensee, in the exercise of its rights hereunder and in conformity with the requirements set out herein, and all obligations imposed therein shall continue in full force and effect subject to their terms.

9.5 All obligations of the Parties which expressly or by their nature survive expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding such expiration or termination, until they are satisfied or by their nature expire. For greater clarity, and without limiting the generality of the foregoing, the following provisions survive expiration or termination of this Agreement:

- (a) section 4.0 (*Protection and Acknowledgement Of Source*);
- (b) section 5.0 (*Fees, Royalties and Reporting*);
- (c) section 7.0 (*Representations, Warranties and Indemnities*);
- (d) sections 9.2 and 9.3 (*Effect of Termination*).

## 10.0 NOTICES

10.1 Any report or notice required or permitted to be given by the Parties under this Agreement shall be in writing and given by delivering it in person, or sending it by mail, courier or facsimile addressed as follows:

if to Canada, to:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

and if to the Licensee, to:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

10.2 Any such report or notice shall be effectively conveyed upon receipt, unless received on a day which is not a business day, in which case it shall be deemed to be received on the next business day. Either Party may change its address from time to time by notice given in accordance with this section, and any subsequent notice must be sent to the Party at its changed address.

#### **11.0 PAYMENTS**

11.1 Any payments required to be made to Canada under this Agreement shall be by cheque (in Canadian currency) made payable to the Receiver General for Canada, and delivered to:

11.2 The Licensee shall comply with any further terms and conditions pertaining to payment of monies due and payable to Canada as contained in Schedule “B” attached hereto.

#### **12.0 GENERAL PROVISIONS**

##### **12.1 Applicable Law**

This Agreement shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws in effect in the Province of Ontario, and the laws of Canada, as applicable.

##### **12.2 Entire Agreement**

This Agreement, including the recitals and Schedules “A”, “B” and “C” attached hereto and incorporated herein constitute the entire agreement between the Parties with respect to its subject matter and supersedes any prior agreement or communication of any kind between the Parties. This Agreement may only be amended in writing, signed by both Parties, which expressly states the



intention to amend this Agreement.

### 12.3 Alternate Dispute Resolution

If a dispute arises concerning this Agreement, or if a recommended modification to any term of this Agreement cannot be agreed between the parties, the parties shall resolve the matter:

- (a) firstly, by negotiation;
- (b) secondly, by mediation by a mutually acceptable mediator; and
- (c) thirdly, by binding arbitration.

### 12.4 No Waiver

No condoning, excusing or overlooking by Canada of any default by the Licensee, at any time or times, in performing or observing any of the Licensee's obligations hereunder, will operate as a waiver, renunciation, surrender of or otherwise affect the rights of Canada in respect of any continuing or subsequent default. No waiver of these rights will be inferred from anything done or omitted by Canada except by an express waiver in writing.

### 12.5 Order of Precedence

If there is a conflict or ambiguity between this Agreement and any schedules thereto, this Agreement shall prevail.

### 12.6 No Joint Venture/Licensee not an Agent or Partner

The Parties expressly disclaim any intention to create a partnership, joint venture or joint enterprise. The Parties acknowledge and agree that nothing contained in this Agreement nor any acts of any Party shall constitute or be deemed to constitute the Parties as partners, joint venturers or principal and agent in any way or for any purpose. No Party has the authority to act for, or to assume any obligation or responsibility on behalf of the other Party.

12.7 No updates

Canada assumes no obligation or liability whatsoever for the provision of updates to the Canada Digital Data.

In acceptance of the foregoing, the Parties have apposed their signatures as follows:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, as  
represented by the Minister of \_\_\_\_\_ ,

by: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(title)

\_\_\_\_\_  
(date)

**LICENSEE'S FULL NAME**

by: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(title)

\_\_\_\_\_  
(date)





**SCHEDULE “A”  
to the Fee-Based Unrestricted Use Licence Agreement**

**DESCRIPTION OF CANADA DIGITAL DATA**

**SCHEDULE “B”  
to the Fee-Based Unrestricted Use Licence Agreement**

**FEES, ROYALTIES AND REPORTING**

**CONSULT YOUR INTELLECTUAL PROPERTY OFFICE AND/OR YOUR LEGAL ADVISORS BEFORE COMPLETING THIS SCHEDULE.**

Canada may require the licensee to pay a fee upon execution of the licence agreement. In addition, where deemed appropriate, Canada may also require the payment of royalties. Fees and royalties would be set out in this schedule.

Royalties may be structured in a number of ways, including through a combination of fixed payments made over time (regardless of the volume of sales or sublicences granted), and royalties based on the number of sublicences actually granted. Provisions may also exist for payment of a percentage of the revenues received by the licensee from sublicensees.

Clarity in the calculation of royalty fees is crucial. For example, if royalty fees are not based solely on a “per unit” basis, but rather on a percentage of net income or some other accounting term, it becomes imperative that such term be clearly defined in the licence agreement. It is also important to specify whether the royalties will be based on Gross Revenues or Net Revenues (terms to be defined in this schedule). In the event it is the latter, it will be important to give particular attention to the allowable deductions.

The inclusion of reporting obligations and audit/verification rights of Canada are of particular significance in instances where a licence is royalty-bearing. The licensee may, for instance, be required to report to Canada quarterly on its net sales, etc., concurrent with periodic royalty payments and Canada would want to reserve the right to inspect the licensee’s books to confirm the accuracy of the licensee’s reports. The payment of fees and royalties, as well as reporting obligations, should survive termination of the licence agreement.

In addition to detailing how royalty payments will be calculated, it would also be appropriate to set out in this schedule the mechanism for payment. How is payment of the royalties to be made? By cheque, wire transfer? Who are the contracting parties’ representatives? Contact info?

**SCHEDULE “C”  
to the Fee-Based Unrestricted Use Licence Agreement**

The Licensee shall include these terms and conditions in all agreements it enters into with third parties for:

- 1) the distribution of Value-Added Products; and
- 2) whenever the Licensee is sublicensing any or all of the rights granted to it under section 3.1 of this Fee-Based Unrestricted Use Licence Agreement)

For ease of reference and unless otherwise indicated, capitalized words contained in this Schedule have the meaning ascribed to them in the Fee-Based Unrestricted Use Licence Agreement.

The word “Customer”, as used below, refers to the customer with whom the Licensee is entering into an agreement for the distribution of Value-Added Products or a licence agreement. The Licensee may replace in its own agreements the word “Customer” with an equivalent term.

**TERMS TO BE INCLUDED IN LICENSEE’S AGREEMENTS WITH ITS CUSTOMERS FOR THE DISTRIBUTION OF VALUE-ADDED PRODUCTS THE LICENSEE HAS DEVELOPED:**

1. Her Majesty the Queen in Right of Canada (“Canada”) is the owner, or a licensee, of Intellectual Property Rights in \_\_\_\_\_ [*insert product name*]; and has licensed to \_\_\_\_\_ (*Licensee’s name – corporate name, if applicable*) certain rights to such intellectual property, including the right to sublicense it to third parties, on certain terms and conditions. With payment of the requisite fee (where applicable), Customer is hereby granted a non-exclusive, world-wide, non-assignable licence to exercise such of Canada’s Intellectual Property Rights in \_\_\_\_\_ [*insert product name*] as is necessary for Customer to use, reproduce, extract, modify, translate, further develop and further distribute \_\_\_\_\_ [*insert product name*], and as is necessary for Customer to manufacture and distribute products that Customer may develop by constructing, deriving, developing, adapting, incorporating or by any other means using \_\_\_\_\_ [*insert product name*], in whole or in part.

2. Customer shall include on all products Customer develops or causes to be developed in the exercise of Customer’s rights under section 1 above, in a prominent location, the following notice:

*This product has been produced by or for \_\_\_\_\_ (Customer’s name) and includes data provided by \_\_\_\_\_ (applied title of the department)*

*The incorporation of data sourced from \_\_\_\_\_ (applied title of the department) within this product shall not be construed as constituting an endorsement by \_\_\_\_\_ (applied title of the department).*

3. All copyright, other proprietary notices of Canada and metadata appearing on or

incorporated into \_\_\_\_\_ [*insert product name*], as well as any and all conditions of use associated with \_\_\_\_\_ [*insert product name*], shall be incorporated and maintained on all reproductions of \_\_\_\_\_ [*insert product name*].

4. Customer shall not disassemble, decompile except for the specific purpose of recompiling for software compatibility, or in any way attempt to reverse engineer \_\_\_\_\_ [*insert product name*] or any part thereof.

5. Customer shall not merge or link \_\_\_\_\_ [*insert product name*] with any product or database in such a fashion that gives the appearance that Customer may have received, or had access to, information held by Canada about any identifiable individual, family, household, organization or business.

6. \_\_\_\_\_ [*INSERT PRODUCT NAME*] IS PROVIDED ON AN 'AS-IS' BASIS. CUSTOMER ACKNOWLEDGES AND AGREES THAT CANADA HAS MADE NO REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE ACCURACY, USEFULNESS, NOVELTY, VALIDITY, SCOPE, COMPLETENESS OR CURRENCY OF \_\_\_\_\_ [*INSERT PRODUCT NAME*] OR ANY ELEMENTS THEREIN CONTAINED AND HAS EXPRESSLY DISCLAIMED ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF \_\_\_\_\_ [*INSERT PRODUCT NAME*].

7. CUSTOMER SHALL HAVE NO RECOURSE AGAINST CANADA, WHETHER BY WAY OF ANY SUIT OR ACTION OR OTHER, FOR ANY LOSS, LIABILITY, DAMAGE OR COST THAT CUSTOMER MAY SUFFER OR INCUR AT ANY TIME, BY REASON OF CUSTOMER'S POSSESSION OR USE OF \_\_\_\_\_ [*INSERT PRODUCT NAME*].

**TERMS TO BE INCLUDED WHERE THE LICENSEE IS LICENSING TO A THIRD PARTY THE RIGHTS THAT CANADA HAS GRANTED TO THE LICENSEE**

1. Her Majesty the Queen in Right of Canada ("Canada") is the owner, or a licensee, of Intellectual Property Rights in \_\_\_\_\_ (the "Canada Digital Data"); and has licensed to \_\_\_\_\_ (*Licensee's name – corporate name, if applicable*) certain rights to the Canada Digital Data, including the right to sublicense those rights to third parties, on certain terms and conditions.

2. With payment of the requisite fee (where applicable), Customer is hereby granted a non-exclusive, world-wide, non-assignable licence to use, reproduce, extract, modify, translate, further develop, distribute the Canada Digital Data, and to manufacture or cause to be manufactured and distributed products Customer develops by constructing, deriving, developing, adapting, incorporating or by any other means using the Canada Digital Data, in whole or in part, PROVIDED Customer includes and maintains on all reproductions of the Canada Digital Data, as well as all metadata that was provided by \_\_\_\_\_ (*Licensee's name – corporate name, if applicable*) with the Canada Digital Data, the following notice:

*Reproduced and distributed with the permission of \_\_\_\_\_ (Licensee's name – corporate name, if applicable), authorized licensee of \_\_\_\_\_ (applied title of the department)*

3. Customer shall include on all products Customer develops or causes to be developed in the

exercise of Customer's rights under section 2 above, in a prominent location, the following notice:

*This product has been produced by or for \_\_\_\_\_ (Customer's name) and includes data provided by \_\_\_\_\_ (applied title of the department)*

*The incorporation of data sourced from \_\_\_\_\_ (applied title of the department) within this product shall not be construed as constituting an endorsement by \_\_\_\_\_ (applied title of the department).*

4. All copyright, other proprietary notices of Canada and metadata appearing on or incorporated into the Canada Digital Data, as well as any and all conditions of use associated with the Canada Digital Data, shall be incorporated and maintained on all reproductions thereof.

5. Customer shall not disassemble, decompile or in any way attempt to reverse engineer the Canada Digital Data or any part thereof.

6. Customer shall not merge or link the Canada Digital Data with any product or database in such a fashion that gives the appearance that Customer may have received, or had access to, information held by Canada about any identifiable individual, family, household, organization or business.

7. CUSTOMER ACKNOWLEDGES AND AGREES THAT CANADA HAS MADE NO REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE ACCURACY, USEFULNESS, NOVELTY, VALIDITY, SCOPE, COMPLETENESS OR CURRENCY OF THE CANADA DIGITAL DATA AND HAS EXPRESSLY DISCLAIMED ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE CANADA DIGITAL DATA.

8. CUSTOMER SHALL HAVE NO RECOURSE AGAINST CANADA, WHETHER BY WAY OF ANY SUIT OR ACTION OR OTHER, FOR ANY LOSS, LIABILITY, DAMAGE OR COST THAT CUSTOMER MAY SUFFER OR INCUR AT ANY TIME, BY REASON OF CUSTOMER'S POSSESSION OR USE OF THE CANADA DIGITAL DATA.

## APPENDIX C

### No-Fee End-Use Restricted Licence Agreement For Government Geographic Data

This licence agreement

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,**  
as represented by the Minister of \_\_\_\_\_ (“Canada”)

**AND:**

\_\_\_\_\_ (“Licensee”)

[WHERE IT IS KNOWN TO CANADA THAT THE LICENSEE IS A CORPORATION, INCLUDE AFTER THE FULL CORPORATE NAME OF THE LICENSEE THE FOLLOWING: “a corporation incorporated under the laws of \_\_\_\_\_, having its head office in \_\_\_\_\_”]

**WITNESSES THAT:**

**I. WHEREAS** Canada is the owner, or licensee, of Intellectual Property Rights in and to Canada Digital Data, as described in Schedule “A” attached hereto;

**II. AND WHEREAS** the Licensee is interested in acquiring certain rights to the Canada Digital Data, in accordance with the terms and conditions contained herein; and

**III. AND WHEREAS** Canada is willing to grant to the Licensee certain rights to the Canada Digital Data, in accordance with the terms and conditions contained herein;

**NOW THEREFORE,** in consideration of the covenants contained in this Agreement, the Parties agree as follows:

#### **1.0 DEFINITIONS**

1.1 “**Agreement**” means this no-fee end-use licence agreement, its recitals and the schedule attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

1.2 “**Canada’s Data**” means that Data contained in the Canada Digital Data, the Intellectual Property Rights of which vest in Canada.

1.3 “**Canada Digital Data**” means the digital Data, metadata and related documentation described in Schedule “A” attached hereto, provided by Canada to the Licensee in accordance with the terms and conditions of this Agreement. Canada’s Data is contained in the Canada Digital Data. Canada Digital Data may also contain Data, the Intellectual Property Rights of which vest with third parties, and which is licensed to Canada.

1.4 “**Data**” means any expressed original data fixed in a form giving rise to Intellectual Property Rights, such as described in Schedule “A” attached hereto.

1.5 “**Derived Products**” means any product, system, sub-system, device, component, material or software developed or caused to be developed by the Licensee that interprets the Canada Digital Data but does not incorporate the Canada Digital Data, in whole or in part.

1.6 “**Intellectual Property Rights**” means any and all intellectual property rights recognized by the law, including but not limited to, intellectual property rights protected through legislation.

1.7 “**Party**” means either one of the signatories to this Agreement and includes their respective servants, agents and employees. “**Parties**” means the signatories to this Agreement and includes their respective servants, agents and employees.

## **2.0 INTELLECTUAL PROPERTY RIGHTS**

2.1 Subject to section 2.2 hereof, and without affecting Canada’s Intellectual Property Rights in and to Canada’s Data and any third-party’s Intellectual Property Rights in Data contained in the Canada Digital Data, all Intellectual Property Rights in and to any modification, translation or further development made by the Licensee to the Canada Digital Data in the exercise of the Licensee’s rights under this Agreement shall vest in the Licensee or in such person as the Licensee shall decide.

2.2 All Intellectual Property Rights in and to Canada’s Data shall remain the property of Canada. All Intellectual Property Rights in and to the Data contained in the Canada Digital Data which is not Canada’s Data shall remain the property of the respective content owners and may be protected by copyright, other intellectual property laws, common law or international treaties.

## **3.0 LICENCE GRANT**

3.1 Subject to this Agreement, Canada hereby grants to the Licensee a royalty-free, non-exclusive, world-wide, non-assignable licence to use, reproduce, extract, modify, translate and further develop the Canada Digital Data, for the Licensee’s own internal use, and as is necessary for the manufacture and distribution of Derived Products, for the whole of the period of time described in section 8.0 below (*Term*) PROVIDED all reproductions of the Canada Digital Data include the notice provided in section 5.1 and shall carry the caveat contained in section 7.1 hereof. For clarity, and as indicated in subsection 1.5 above, a Derived Product

does not contain Canada Digital Data, in whole or in part.

#### **4.0 RESTRICTIONS ON USE OF THE CANADA DIGITAL DATA**

4.1 Notwithstanding section 3.1 above, the Licensee shall not, nor allow or direct any person to:

(a) disassemble, decompile except for the specific purpose of recompiling for software compatibility, or in any way attempt to reverse engineer the Canada Digital Data or any part thereof;

(b) publish, communicate or distribute the Canada Digital Data or any part thereof, to a third party, for any purpose whatsoever; or

(c) merge or link the Canada Digital Data with any product or database in such a fashion that gives the appearance that the Licensee may have received, or had access to, information held by Canada about any identifiable individual, family, household, organization or business.

4.2 Subsection 4.1(b) shall not be construed or deemed to prohibit reproduction, publication, communication or redistribution of parts of the Canada Digital Data:

(a) for the purposes of research or private study, criticism or review or news reporting, as contemplated by sections 29, 29.1 and 29.2 of the *Copyright Act*, R.S.C 1985, C-42; or

(b) by an educational institution, as defined in the *Copyright Act*, and for the purposes set out in section 29.4 of the *Copyright Act*,

provided in all instances the source is acknowledged in all such documents or communications in the following manner:

*“Source (or “Adapted from”, if appropriate): \_\_\_\_\_ (applied title of the department), \_\_\_\_\_(name of product), \_\_\_\_\_(specific identifiers, etc...)”*

#### **5.0 PROTECTION AND ACKNOWLEDGEMENT OF SOURCE**

5.1 The Licensee shall include and maintain on all reproductions of the Canada Digital Data, produced pursuant to section 3.0 and section 4.2 above, as well as all metadata that was provided by Canada with the Canada Digital Data, the following notice:

*Reproduced with the permission of \_\_\_\_\_ (applied title of the department)*

5.2 The Licensee shall ensure that no acknowledgment of Canada, except as permitted under section 5.1 above, shall be shown in association with any form of promotion or advertisement of Derived Products. The Licensee shall not include in its promotional material:

(a) the name, crest, logos, flags or other insignia or domain names of Canada, without the prior written approval of Canada, which approval may be refused at Canada’s sole



discretion; or

(b) any annotation of any kind that may be interpreted as an endorsement by Canada of the Derived Products.

5.3 The Licensee shall include in a prominent location on all Derived Products the following notice:

*This product has been produced by or for (name of Licensee) based on data provided by \_\_\_\_\_ (applied title of the department)*

## **6.0 OBLIGATIONS OF THE LICENSEE**

6.1 The Licensee shall promptly notify Canada of any infringement by third parties of the Canada Digital Data when such becomes known to the Licensee and where possible provide a sample of such infringement and co-operate with Canada in enforcing Canada's Intellectual Property Rights against the infringer. The Licensee shall not institute any suit or take any action on account of any such infringements without Canada's prior written consent.

6.2 The Licensee shall not use any identifier or mark of Canada, or the name of \_\_\_\_\_ (applied title of the department) in a manner that would imply that the Licensee has an exclusive arrangement for any or all of the Canada Digital Data, or that the Licensee has access to any confidential information or information not available to any other party.

6.3 The Licensee shall not use the Canada Digital Data in any way which in the opinion of Canada, may bring disrepute to or prejudice the reputation of Canada.

6.4 The Licensee shall supply to Canada, prior to its use or publication, a copy of all recommended marketing and promotional literature that identifies the Canada Digital Data or refers to the relationship between the Licensee and Canada. Canada shall notify the Licensee of any required changes within seven (7) working days of receipt of the materials. The Licensee shall make all changes to such materials as Canada, in its sole discretion, deems advisable.

6.5 The Licensee shall promptly notify Canada of any action or proceeding or any event that may affect its ability and capacity to exercise its licensed rights and fulfill its obligations under this Agreement.

## **7.0 REPRESENTATIONS, WARRANTIES, INDEMNITIES**

7.1 CANADA MAKES NO REPRESENTATION AND GIVES NO WARRANTY OF ANY KIND WITH RESPECT TO THE ACCURACY, USEFULNESS, NOVELTY, VALIDITY, SCOPE, COMPLETENESS OR CURRENCY OF THE CANADA DIGITAL DATA AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE CANADA DIGITAL DATA.

7.2 THE LICENSEE SHALL HAVE NO RECOURSE AGAINST CANADA, WHETHER

BY WAY OF ANY SUIT OR ACTION OR OTHER, FOR ANY LOSS, LIABILITY, DAMAGE OR COST THAT THE LICENSEE MAY SUFFER OR INCUR AT ANY TIME, BY REASON OF THE LICENSEE'S POSSESSION OR USE OF THE CANADA DIGITAL DATA, OR ARISING OUT OF THE EXERCISE OF ITS RIGHTS OR THE FULFILMENT OF ITS OBLIGATIONS HEREUNDER.

7.3 THE LICENSEE SHALL AT ALL TIMES INDEMNIFY AND HOLD CANADA AND ITS MINISTERS, EMPLOYEES AND AGENTS HARMLESS FROM ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, COSTS, ACTIONS OR OTHER PROCEEDINGS MADE, SUSTAINED, BROUGHT OR PROSECUTED BY ANY PERSON IN ANY MANNER, BASED UPON, OR OCCASIONED BY, OR ATTRIBUTED TO ANY INJURY, INFRINGEMENT OR DAMAGE ARISING OUT OF ANY ACTION OR OMISSION OF THE LICENSEE, ARISING FROM ERRONEOUS COMMUNICATION BY THE LICENSEE, OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE BY THE LICENSEE OF ITS RIGHTS AND OBLIGATIONS HEREUNDER, OR ARISING FROM THE MANUFACTURE, PUBLICATION, DISTRIBUTION OR USE OF DERIVED PRODUCTS.

## **8.0 TERM**

8.1 This Agreement is effective as of the date of the last signature of the Parties and shall remain in effect for a period of \_\_\_\_ (\_\_\_\_) year(s), subject to sections 8.2 and 9.0 below.

8.2 Provided the Licensee is not in breach of any of the terms and conditions of this Agreement at the end of the term, this Agreement shall be automatically renewed for successive one (1) year terms, subject to section 9 below, unless either Party gives written notice to the other Party of the non-renewal of this Agreement at least thirty (30) days prior to the end of the then-current term.

## **9.0 TERMINATION**

9.1 Notwithstanding section 8.0 above, this Agreement may be terminated prior to its expiration:

- (a) automatically, upon Canada giving thirty (30) days written notice to the Licensee of termination of the Agreement by reason of default, if the Licensee commits or permits a breach of any of the terms and conditions of this Agreement;
- (b) upon written notice of termination given by either Party at any time, and such termination shall take effect thirty (30) days after the receipt by the other Party of such notice; or
- (c) upon written agreement of the Parties.

9.2 Upon the expiration or termination of this Agreement, for whatever reason, the obligations of Canada hereunder shall immediately cease, the Licensee's rights under section 3 hereof shall immediately cease, and the Licensee shall return immediately to Canada the Canada Digital Data and all reproductions thereof, and certify in writing to Canada, within

thirty (30) days of expiration or termination, that all of the Canada Digital Data has been returned to Canada.

9.3 Notwithstanding section 9.2 above, the Licensee may, with the prior written approval of Canada, which approval shall be at Canada's sole discretion, continue to distribute Derived Products for the purpose of completing orders made before the expiration or termination date of this Agreement, provided the Licensee shall continue to comply with the requirements to protect and acknowledge the source, as required under section 5 hereof.

9.4 Notwithstanding the expiration or termination of this Agreement, all agreements entered into prior to such expiration or termination by the Licensee, in the exercise of its rights hereunder and in conformity with the requirements set out herein, and all obligations imposed therein shall continue in full force and effect subject to their terms.

9.5 All obligations of the Parties which expressly or by their nature survive expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding such expiration or termination, until they are satisfied or by their nature expire. For greater clarity, and without limiting the generality of the foregoing, the following provisions survive expiration or termination of this Agreement:

- (a) section 5 (*Protection And Acknowledgement of Source*)
- (b) section 7 (*Representations, Warranties and Indemnities*);
- (c) sections 9.2 and 9.3 (*Effect of Termination*)

## 10.0 NOTICES

10.1 Any report or notice required or permitted to be given by the Parties under this Agreement shall be in writing and given by delivering it in person, or sending it by mail, courier or facsimile addressed as follows:

if to Canada, to:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

and if to the Licensee, to:

\_\_\_\_\_  
Name

\_\_\_\_\_

Title

\_\_\_\_\_

Address

10.2 Any such report or notice shall be effectively conveyed upon receipt, unless received on a day which is not a business day, in which case it shall be deemed to be received on the next business day. Either Party may change its address from time to time by notice given in accordance with this section, and any subsequent notice must be sent to the Party at its changed address.

## **11.0 GENERAL PROVISIONS**

### 11.1 Applicable Law

This Agreement shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws in effect in the Province of Ontario, and the laws of Canada, as applicable.

### 11.2 Entire Agreement

This Agreement, including the recitals and Schedule “A” attached hereto and incorporated herein constitute the entire agreement between the Parties with respect to its subject matter and supersedes any prior agreement or communication of any kind between the Parties. This Agreement may only be amended in writing, signed by both Parties, which expressly states the intention to amend this Agreement.

### 11.3 Alternate Dispute Resolution

If a dispute arises concerning this Agreement, or if a recommended modification of any term of this Agreement cannot be agreed between the Parties, the Parties shall resolve the matter:

- (a) firstly, by negotiation;
- (b) secondly, by mediation by a mutually acceptable mediator; and
- (c) thirdly, by binding arbitration.

### 11.4 No Waiver

No condoning, excusing or overlooking by Canada of any default by the Licensee, at any time or times, in performing or observing any of the Licensee’s obligations hereunder, will operate as a waiver, renunciation, surrender of or otherwise affect the rights of Canada in respect of any continuing or subsequent default. No waiver of these rights will be inferred from anything done or omitted by Canada except by an express waiver in writing.

11.5 Order of Precedence

If there is a conflict or ambiguity between this Agreement and any schedules thereto, this Agreement shall prevail.

11.6 No Joint Venture/Licensee not an Agent or Partner

The Parties expressly disclaim any intention to create a partnership, joint venture or joint enterprise. The Parties acknowledge and agree that nothing contained in this Agreement nor any acts of any Party shall constitute or be deemed to constitute the Parties as partners, joint venturers or principal and agent in any way or for any purpose. No Party has the authority to act for, or to assume any obligation or responsibility on behalf of the other Party.

11.7 No updates

Canada assumes no obligation or liability whatsoever for the provision of updates to the Canada Digital Data.

In acceptance of the foregoing, the Parties have apposed their signatures as follows:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, as represented by the Minister of \_\_\_\_\_ ,

by: \_\_\_\_\_  
(signature)  
\_\_\_\_\_  
(printed name)  
\_\_\_\_\_  
(title)  
\_\_\_\_\_  
(date)

**LICENSEE'S FULL NAME**

by: \_\_\_\_\_  
(signature)  
\_\_\_\_\_  
(printed name)  
\_\_\_\_\_  
(title)  
\_\_\_\_\_  
(date)



**SCHEDULE “A”  
to the No-Fee End-Use Licence Agreement  
DESCRIPTION OF THE CANADA DIGITAL DATA**

## APPENDIX D

### Fee-Based End-Use Restricted Licence Agreement for Government Geographic Data

This licence agreement

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,**  
as represented by the Minister of \_\_\_\_\_ (“Canada”)

**AND:**

\_\_\_\_\_ (“Licensee”)

[WHERE IT IS KNOWN TO CANADA THAT THE LICENSEE IS A CORPORATION, INCLUDE AFTER THE FULL CORPORATE NAME OF THE LICENSEE THE FOLLOWING: “a corporation incorporated under the laws of \_\_\_\_\_, having its head office in \_\_\_\_\_”]

**WITNESSES THAT:**

**I. WHEREAS** Canada is the owner, or licensee, of Intellectual Property Rights in and to Canada Digital Data, as described in Schedule “A” attached hereto;

**II. AND WHEREAS** the Licensee is interested in acquiring certain rights to the Canada Digital Data, in accordance with the terms and conditions contained herein; and

**III. AND WHEREAS** Canada is willing to grant to the Licensee certain rights to the Canada Digital Data, in accordance with the terms and conditions contained herein;

**NOW THEREFORE**, in consideration of the covenants contained in this Agreement, the Parties agree as follows:

#### **1.0 DEFINITIONS**

1.1 “**Agreement**” means this fee-based end-use licence agreement, its recitals and the schedules attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

1.2 “**Canada’s Data**” means that Data contained in the Canada Digital Data, the Intellectual Property Rights of which vest in Canada.

1.3 “**Canada Digital Data**” means the digital Data, metadata and related documentation described in Schedule “A” attached hereto, provided by Canada to the Licensee in accordance

with the terms and conditions of this Agreement. Canada's Data is contained in the Canada Digital Data. Canada Digital Data may also contain Data, the Intellectual Property Rights of which vest with third parties, and which is licensed to Canada.

1.4 **"Data"** means any expressed original data fixed in a form giving rise to Intellectual Property Rights, such as described in Schedule "A" attached hereto.

1.5 **"Derived Products"** means any product, system, sub-system, device, component, material or software developed or caused to be developed by the Licensee that interprets the Canada Digital Data but does not incorporate the Canada Digital Data, in whole or in part.

1.6 **"Intellectual Property Rights"** means any and all intellectual property rights recognized by the law, including but not limited to, intellectual property rights protected through legislation.

1.7 **"Party"** means either one of the signatories to this Agreement and includes their respective servants, agents and employees. **"Parties"** means the signatories to this Agreement and includes their respective servants, agents and employees.

## **2.0 INTELLECTUAL PROPERTY RIGHTS**

2.1 Subject to section 2.2 hereof, and without affecting Canada's Intellectual Property Rights in and to Canada's Data and any third-party's Intellectual Property Rights in Data contained in the Canada Digital Data, all Intellectual Property Rights in and to any modification, translation or further development made by the Licensee to the Canada Digital Data in the exercise of the Licensee's rights under this Agreement shall vest in the Licensee or in such person as the Licensee shall decide.

2.2 All Intellectual Property Rights in and to Canada's Data shall remain the property of Canada. All Intellectual Property Rights in and to the Data contained in the Canada Digital Data which is not Canada's Data shall remain the property of the respective content owners and may be protected by copyright, other intellectual property laws, common law or international treaties.

## **3.0 LICENCE GRANT**

3.1 Subject to this Agreement, Canada hereby grants to the Licensee a royalty-based, non-exclusive, world-wide, non-assignable licence to use, reproduce, extract, modify, translate and further develop the Canada Digital Data, for the Licensee's own internal use, and as is necessary for the manufacture and distribution of Derived Products, for the whole of the period of time described in section 9.0 below (*Term*) PROVIDED all reproductions of the Canada Digital Data include the notice provided in section 5.1 and shall carry the caveat contained in section 8.1 hereof. For clarity, and as indicated in subsection 1.5 above, a Derived Product does not contain Canada Digital Data, in whole or in part.

## **4.0 RESTRICTIONS ON USE OF THE CANADA DIGITAL DATA**

4.1 Notwithstanding section 3.1 above, the Licensee shall not, nor allow or direct any person



to:

(a) disassemble, decompile except for the specific purpose of recompiling for software compatibility, or in any way attempt to reverse engineer the Canada Digital Data or any part thereof;

(b) publish, communicate or distribute the Canada Digital Data or any part thereof, to a third party, for any purpose whatsoever; or

(c) merge or link the Canada Digital Data with any product or database in such a fashion that gives the appearance that the Licensee may have received, or had access to, information held by Canada about any identifiable individual, family, household, organization or business.

4.2 Subsection 4.1(b) shall not be construed or deemed to prohibit reproduction, publication, communication or redistribution of parts of the Canada Digital Data:

(a) for the purposes of research or private study, criticism or review or news reporting, as contemplated by sections 29, 29.1 and 29.2 of the *Copyright Act*, R.S.C 1985, C-42; or

(b) by an educational institution, as defined in the *Copyright Act*, and for the purposes set out in section 29.4 of the *Copyright Act*,

provided in all instances the source is acknowledged in all such documents or communications in the following manner:

*“Source (or “Adapted from”, if appropriate): \_\_\_\_\_ (applied title of the department), \_\_\_\_\_(name of product), \_\_\_\_\_(specific identifiers, etc...)”*

## **5.0 PROTECTION AND ACKNOWLEDGEMENT OF SOURCE**

5.1 The Licensee shall include and maintain on all reproductions of the Canada Digital Data, produced pursuant to section 3.0 and section 4.2 above, as well as all metadata that was provided by Canada with the Canada Digital Data, the following notice:

*Reproduced with the permission of \_\_\_\_\_ (applied title of the department)*

5.2 The Licensee shall ensure that no acknowledgment of Canada, except as permitted under section 5.1 above, shall be shown in association with any form of promotion or advertisement of Derived Products. The Licensee shall not include in its promotional material:

(a) the name, crest, logos, flags or other insignia or domain names of Canada, without the prior written approval of Canada, which approval may be refused at Canada’s sole discretion; or

(b) any annotation of any kind that may be interpreted as an endorsement by Canada of the Derived Products.

5.3 The Licensee shall include in a prominent location on all Derived Products the following notice:

*This product has been produced by or for (name of Licensee) based on data provided by \_\_\_\_\_ (applied title of the department).*

## **6.0 FEES, ROYALTIES and REPORTING**

6.1 The Licensee shall pay to Canada the fees and/or royalties prescribed in Schedule “B” attached hereto and comply with all requirements therein set out.

## **7.0 OBLIGATIONS OF THE LICENSEE**

7.1 The Licensee shall promptly notify Canada of any infringement by third parties of the Canada Digital Data when such becomes known to the Licensee and where possible provide a sample of such infringement and co-operate with Canada in enforcing Canada’s Intellectual Property Rights against the infringer. The Licensee shall not institute any suit or take any action on account of any such infringements without Canada’s prior written consent.

7.2 The Licensee shall not use any identifier or mark of Canada, or the name of \_\_\_\_\_ (applied title of the department) in a manner that would imply that the Licensee has an exclusive arrangement for any or all of the Canada Digital Data, or that the Licensee has access to any confidential information or information not available to any other party.

7.3 The Licensee shall not use the Canada Digital Data in any way which in the opinion of Canada, may bring disrepute to or prejudice the reputation of Canada.

7.4 The Licensee shall supply to Canada, prior to its use or publication, a copy of all recommended marketing and promotional literature that identifies the Canada Digital Data or refers to the relationship between the Licensee and Canada. Canada shall notify the Licensee of any required changes within seven (7) working days of receipt of the materials. The Licensee shall make all changes to such materials as Canada, in its sole discretion, deems advisable.

7.5 The Licensee shall promptly notify Canada of any action or proceeding or any event that may affect its ability and capacity to exercise its licensed rights and fulfill its obligations under this Agreement.

## **8.0 REPRESENTATIONS, WARRANTIES, INDEMNITIES**

8.1 CANADA MAKES NO REPRESENTATION AND GIVES NO WARRANTY OF ANY KIND WITH RESPECT TO THE ACCURACY, USEFULNESS, NOVELTY, VALIDITY, SCOPE, COMPLETENESS OR CURRENCY OF THE CANADA DIGITAL DATA AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE CANADA DIGITAL DATA.

8.2 THE LICENSEE SHALL HAVE NO RECOURSE AGAINST CANADA, WHETHER BY WAY OF ANY SUIT OR ACTION OR OTHER, FOR ANY LOSS, LIABILITY, DAMAGE OR COST THAT THE LICENSEE MAY SUFFER OR INCUR AT ANY TIME, BY REASON OF THE LICENSEE'S POSSESSION OR USE OF THE CANADA DIGITAL DATA, OR ARISING OUT OF THE EXERCISE OF ITS RIGHTS OR THE FULFILMENT OF ITS OBLIGATIONS HEREUNDER.

8.3 THE LICENSEE SHALL AT ALL TIMES INDEMNIFY AND HOLD CANADA AND ITS MINISTERS, EMPLOYEES AND AGENTS HARMLESS FROM ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, COSTS, ACTIONS OR OTHER PROCEEDINGS MADE, SUSTAINED, BROUGHT OR PROSECUTED BY ANY PERSON IN ANY MANNER, BASED UPON, OR OCCASIONED BY, OR ATTRIBUTED TO ANY INJURY, INFRINGEMENT OR DAMAGE ARISING OUT OF ANY ACTION OR OMISSION OF THE LICENSEE, ARISING FROM ERRONEOUS COMMUNICATION BY THE LICENSEE, OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE BY THE LICENSEE OF ITS RIGHTS AND OBLIGATIONS HEREUNDER, OR ARISING FROM THE MANUFACTURE, PUBLICATION, DISTRIBUTION OR USE OF DERIVED PRODUCTS.

## **9.0 TERM**

9.1 This Agreement is effective as of the date of the last signature of the Parties and shall remain in effect for a period of \_\_\_\_ (\_\_\_\_) year(s), subject to sections 9.2 and 10.0 below.

9.2 Provided the Licensee is not in breach of any of the terms and conditions of this Agreement at the end of the term, this Agreement shall be automatically renewed for successive one (1) year terms, subject to section 10 below, unless either Party gives written notice to the other Party of the non-renewal of this Agreement at least thirty (30) days prior to the end of the then-current term.

## **10.0 TERMINATION**

10.1 Notwithstanding section 9.0 above, this Agreement may be terminated prior to its expiration:

- (a) automatically, upon Canada giving thirty (30) days written notice to the Licensee of termination of the Agreement by reason of default, if the Licensee commits or permits a breach of any of the terms and conditions of this Agreement;
- (b) upon written notice of termination given by either Party at any time, and such termination shall take effect thirty (30) days after the receipt by the other Party of such notice; or
- (c) upon written agreement of the Parties.

10.2 Upon the expiration or termination of this Agreement, for whatever reason, the obligations of Canada hereunder shall immediately cease, the Licensee's rights under section 3 hereof shall immediately cease, and the Licensee shall return immediately to Canada the

Canada Digital Data and all reproductions thereof, and certify in writing to Canada, within thirty (30) days of expiration or termination, that all of the Canada Digital Data has been returned to Canada.

10.3 Notwithstanding section 10.2 above, the Licensee may, with the prior written approval of Canada, which approval shall be at Canada's sole discretion, continue to distribute Derived Products for the purpose of completing orders made before the expiration or termination date of this Agreement, provided the Licensee shall:

- (a) continue to pay royalties as required under section 6 and Schedule "B" hereof for any Derived Product distributed by the Licensee after expiration of termination of this Agreement, within seven (7) days of the liability being incurred;
- (b) continue to comply with the requirements to protect and acknowledge the source, as required under section 5 hereof; and
- (c) continue to fulfill its reporting obligations set out in Schedule "B" attached hereto.

10.4 Notwithstanding the expiration or termination of this Agreement, all agreements entered into prior to such expiration or termination by the Licensee, in the exercise of its rights hereunder and in conformity with the requirements set out herein, and all obligations imposed therein shall continue in full force and effect subject to their terms.

10.5 All obligations of the Parties which expressly or by their nature survive expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding such expiration or termination, until they are satisfied or by their nature expire. For greater clarity, and without limiting the generality of the foregoing, the following provisions survive expiration or termination of this Agreement:

- (a) section 5 (*Protection And Acknowledgement of Source*)
- (b) section 6 (*Fees, Royalties and Reporting*);
- (c) section 8 (*Representations, Warranties and Indemnities*);
- (d) sections 10.2 and 10.3 (*Effect of Termination*).

## 11.0 NOTICES

11.1 Any report or notice required or permitted to be given by the Parties under this Agreement shall be in writing and given by delivering it in person, or sending it by mail, courier or facsimile addressed as follows:

if to Canada, to:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

and if to the Licensee, to:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

11.2 Any such report or notice shall be effectively conveyed upon receipt, unless received on a day which is not a business day, in which case it shall be deemed to be received on the next business day. Either Party may change its address from time to time by notice given in accordance with this section, and any subsequent notice must be sent to the Party at its changed address.

11.3 The Licensee shall comply with any further terms and conditions pertaining to payment of monies due and payable to Canada as contained in Schedule "B" attached hereto.

## **12.0 GENERAL PROVISIONS**

### 12.1 Applicable Law

This Agreement shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws in effect in the Province of Ontario, and the laws of Canada, as applicable.

### 12.2 Entire Agreement

This Agreement, including the recitals and Schedules "A" and "B" attached hereto and incorporated herein constitute the entire agreement between the Parties with respect to its subject matter and supersedes any prior agreement or communication of any kind between the Parties. This Agreement may only be amended in writing, signed by both Parties, which expressly states the intention to amend this Agreement.

### 12.3 Alternate Dispute Resolution

If a dispute arises concerning this Agreement, or if a recommended modification of any term of this Agreement cannot be agreed between the Parties, the Parties shall resolve the matter:

- (a) firstly, by negotiation;
- (b) secondly, by mediation by a mutually acceptable mediator; and

(c) thirdly, by binding arbitration.

#### 12.4 No Waiver

No condoning, excusing or overlooking by Canada of any default by the Licensee, at any time or times, in performing or observing any of the Licensee's obligations hereunder, will operate as a waiver, renunciation, surrender of or otherwise affect the rights of Canada in respect of any continuing or subsequent default. No waiver of these rights will be inferred from anything done or omitted by Canada except by an express waiver in writing.

#### 12.5 Order of Precedence

If there is a conflict or ambiguity between this Agreement and any schedules thereto, this Agreement shall prevail.

#### 12.6 No Joint Venture/Licensee not an Agent or Partner

The Parties expressly disclaim any intention to create a partnership, joint venture or joint enterprise. The Parties acknowledge and agree that nothing contained in this Agreement nor any acts of any Party shall constitute or be deemed to constitute the Parties as partners, joint venturers or principal and agent in any way or for any purpose. No Party has the authority to act for, or to assume any obligation or responsibility on behalf of the other Party.

12.7 No updates

Canada assumes no obligation or liability whatsoever for the provision of updates to the Canada Digital Data.

In acceptance of the foregoing, the Parties have apposed their signatures as follows:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, as represented by  
the Minister of \_\_\_\_\_ ,

by: \_\_\_\_\_  
(signature)  
\_\_\_\_\_  
(printed name)  
\_\_\_\_\_  
(title)  
\_\_\_\_\_  
(date)

**LICENSEE'S FULL NAME**

by: \_\_\_\_\_  
(signature)  
\_\_\_\_\_  
(printed name)  
\_\_\_\_\_  
(date)  
\_\_\_\_\_



**SCHEDULE “A”  
to the Fee-Based End-Use Restricted Licence Agreement  
DESCRIPTION OF THE CANADA DIGITAL DATA**



**SCHEDULE “B”  
to the Fee-Based End-Use Restricted Licence Agreement**

**FEES, ROYALTIES AND REPORTING**

**CONSULT YOUR INTELLECTUAL PROPERTY OFFICE AND/OR YOUR LEGAL ADVISORS BEFORE COMPLETING THIS SCHEDULE.**

Canada may require the licensee to pay a fee upon execution of the licence agreement. In addition, where deemed appropriate, Canada may also require the payment of royalties. Fees and royalties would be set out in this schedule.

Royalties may be structured in a number of ways, including through a combination of fixed payments made over time (regardless of the volume of sales or sublicences granted), and royalties based on the number of sublicences actually granted. Provisions may also exist for payment of a percentage of the revenues received by the licensee from sublicensees.

Clarity in the calculation of royalty fees is crucial. For example, if royalty fees are not based solely on a “per unit” basis, but rather on a percentage of net income or some other accounting term, it becomes imperative that such term be clearly defined in the licence agreement. It is also important to specify whether the royalties will be based on Gross Revenues or Net Revenues (terms to be defined in this schedule). In the event it is the latter, it will be important to give particular attention to the allowable deductions.

The inclusion of reporting obligations and audit/verification rights of Canada are of particular significance in instances where a licence is royalty-bearing. The licensee may, for instance, be required to report to Canada quarterly on its net sales, etc., concurrent with periodic royalty payments and Canada would want to reserve the right to inspect the licensee’s books to confirm the accuracy of the licensee’s reports. The payment of fees and royalties, as well as reporting obligations, should survive termination of the licence agreement.

In addition to detailing how royalty payments will be calculated, it would also be appropriate to set out in this schedule the mechanism for payment. How is payment of the royalties to be made? By cheque, wire transfer? Who are the contracting parties’ representatives? Contact info?

## APPENDIX E

### Reseller Agreement

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,**  
as represented by the Minister of \_\_\_\_\_ (“Canada”)

**AND:**

\_\_\_\_\_, a corporation incorporated under the laws of  
\_\_\_\_\_, having its head office in \_\_\_\_\_ (the “Reseller”)

**WITNESSES THAT:**

- I. WHEREAS** Canada is the owner, or licensee, of Intellectual Property Rights in and to Canada Digital Data, as described in Schedule “A” attached hereto;
- II. AND WHEREAS** the Reseller is interested in acquiring certain rights to the Canada Digital Data, in accordance with the terms and conditions contained herein; and
- III. AND WHEREAS** Canada is willing to grant to the Reseller certain rights to the Canada Digital Data, in accordance with the terms and conditions contained herein;

**NOW THEREFORE**, in consideration of the covenants contained in this Agreement, the Parties agree as follows:

#### **1.0 DEFINITIONS**

1.1 “**Agreement**” means this reseller agreement, its recitals and all schedules attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

1.2 “**Canada’s Data**” means that Data contained in the Canada Digital Data, the Intellectual Property Rights of which vest in Canada.

1.3 “**Canada Digital Data**” means the digital Data, metadata and related documentation described in Schedule “A” attached hereto, provided by Canada to the Reseller for distribution on an end-use basis, in accordance with the terms and conditions of this Agreement. Canada’s Data is contained in the Canada Digital Data. Canada Digital Data may also contain Data, the Intellectual Property Rights of which vest with third parties, and which is licensed to Canada.

1.4 “**Data**” means any original data fixed in a form giving rise to Intellectual Property

Rights, such as described in Schedule “A” attached hereto.

1.5 “**End-Users**” means an individual, corporation or organisation to which the Reseller licenses, on an end-use basis, all or part of the Canada Digital Data, in accordance with the terms and conditions of this Agreement, including those set out in Schedule “D” attached hereto.

1.6 “**Intellectual Property Rights**” means any and all intellectual property rights recognized by the law, including intellectual property rights protected through legislation.

1.7 “**Market**” means (describe the targeted clientèle)

1.8 “**Party**” means either one of the signatories to this Agreement and includes their respective servants, agents and employees. “**Parties**” means the signatories to this Agreement and includes their respective servants, agents and employees.

## **2.0 INTELLECTUAL PROPERTY RIGHTS**

2.1 All Intellectual Property Rights in and to Canada’s Data shall remain the property of Canada. All Intellectual Property Rights in and to Data contained in the Canada Digital Data which is not Canada’s Data shall remain the property of the respective content owners and may be protected by copyright, other intellectual property laws, common law or international treaties.

## **3.0 LICENCE GRANT**

3.1 Subject to this Agreement, and in consideration of the payment of royalties as provided hereunder, Canada grants to the Reseller a royalty-based, non-exclusive, non-assignable licence to use, reproduce, extract, modify and translate the Canada Digital Data, as is necessary for the purposes of promoting to the Market and distributing to End-Users the Canada Digital Data, in whole or in part, for the whole of the period of time described in section 8 (*Term*) PROVIDED:

(a) the Reseller shall not modify or alter in any way the Canada Digital Data, other than as authorized in Schedule “C” attached hereto;

(b) any and all reproductions of the Canada Digital Data shall include the notice provided in section 4.1 and shall carry the caveat contained in section 7.1 hereof; and

(c) all distributions to End-Users of the Canada Digital Data, in whole or in part, shall be on an end-use basis and shall be evidenced by a written end-use licence agreement containing the terms and conditions set out in Schedule “D”

attached hereto.

3.2 The Reseller shall not use the Canada Digital Data or any part thereof to develop any new product for distribution or for use by any other party.

3.3 The Reseller shall not disassemble, decompile except for the specific purpose of recompiling for software compatibility, or in any way attempt to reverse engineer the Canada Digital Data or any part thereof, and the Reseller shall not merge or link the Canada Digital Data with any product or database in such a fashion that gives the appearance that the Reseller may have received or had access to, information held by Canada about any identifiable individual, family, household, organization or business.

#### **4.0 PROTECTION AND ACKNOWLEDGEMENT OF SOURCE**

4.1 The Reseller shall include and maintain on all reproductions of the Canada Digital Data, produced for distribution pursuant to section 3.0 above, as well as all metadata that was provided by Canada with the Canada Digital Data, the following notice:

*Reproduced and distributed with the permission of \_\_\_\_\_ (applied title of the department)*

4.2 The Reseller shall ensure that no acknowledgement of Canada, except as permitted under section 4.1 above, shall be shown in association with any form of promotion or advertisement of, or associated with, the Reseller's business. The Reseller shall not include in its promotion materials:

(a) the name, crest, logos, flags or other insignia or domain names of Canada, without the prior written approval of Canada, which approval may be refused at Canada's sole discretion; or

(b) any annotation of any kind that may be interpreted as an endorsement by Canada of the activities or products of the Reseller.

#### **5.0 FEES, ROYALTIES AND REPORTING**

5.1 The Reseller shall pay to Canada the fees and/or royalties prescribed in Schedule "B" attached hereto and comply with all requirements therein set out.

#### **6.0 OBLIGATIONS OF THE RESELLER**

6.1 The Reseller shall exercise due care, skill and diligence in marketing, distributing or otherwise making the Canada Digital Data available to the Market.

6.2 The Reseller shall take all reasonable precautions and actions to ensure that the

Canada Digital Data is not marketed, distributed or otherwise made available to the Market except in accordance with the terms of this Agreement.

6.3 The Reseller shall diligently monitor and enforce any and all agreements it enters into with its End-Users.

6.4 The Reseller shall promptly notify Canada of any infringement by third parties of the Canada Digital Data when such becomes known to the Reseller and where possible provide a sample of such infringement and co-operate with Canada in enforcing Canada's Intellectual Property Rights against the infringer. The Reseller shall not institute any suit or take any action on account of any such infringements without Canada's prior written consent.

6.5 The Reseller shall ensure that there are no contradictions or inconsistencies between the terms and conditions set out in Schedule "D" attached hereto, and the other terms and conditions to be included in the end-use licence agreement to be entered into between the Reseller and the End-Users. The Reseller shall do nothing to violate or encourage violation of the terms and conditions set out in Schedule "D" hereto, and shall diligently report to Canada any actual or suspected violation of such terms and conditions.

6.6 The Reseller shall, when it has knowledge that an End-User's intended use of the Canada Digital Data falls outside the terms and conditions set out in Schedule "D" attached hereto, promptly refer such End-User to Canada.

6.7 The Reseller shall not use any identifier or mark of Canada, or the name of \_\_\_\_\_ (applied title of the department) in a manner that would imply that the Reseller has an exclusive distribution arrangement for any or all of the Canada Digital Data, or that the Reseller has access to any confidential information or information not available to any other party.

6.8 The Reseller shall not engage in any conduct nor use the Canada Digital Data in any way which in the opinion of Canada, may bring disrepute to or prejudice the reputation of Canada.

6.9 The Reseller shall use Canada's current catalogue and/or price list(s) as the basis for the provision of price quotations.

6.10 The Reseller shall supply to Canada, prior to its use or publication, a copy of all recommended sales and promotional literature and catalogues, price lists or other similar materials which identifies the Canada Digital Data or refers to the relationship between Canada and the Reseller. Canada shall notify the Reseller of any required changes within seven (7) days of receipt of the materials. The Reseller shall make all changes to such materials as Canada, in its discretion, deems advisable.

6.11 The Reseller shall promptly notify Canada of any action or proceeding or any

event that may affect its ability and capacity to exercise its licensed rights and fulfill its obligations under this Agreement.

6.12 (a) The Reseller shall keep true and accurate records, using generally accepted accounting principles, and maintain such records during the term of this Agreement and for a period of two (2) years following the expiration or termination of this Agreement. Such records shall provide sufficiently detailed information to allow Canada to calculate and easily audit any payment required to be made to Canada under this Agreement and ascertain fulfilment of all other obligations of the Reseller under this Agreement.

(b) The Reseller shall, on ten (10) days' prior notice from Canada, and no more than once per year, provide to Canada or to Canada's authorized auditors access to its premises, during reasonable working hours, to make periodic audits of its records, relevant to the determination of fees and/or royalties payable to Canada under this Agreement and otherwise pertaining to the Reseller's obligations under this Agreement. The Reseller shall allow Canada, or its authorized auditors, to make any necessary copies of the records, as Canada or its authorized auditors deem fit.

(c) In the event of any discrepancy uncovered by an audit as between the fees and/or royalties that should have been paid to Canada and those that have been paid to Canada, which discrepancy is in excess of \_\_\_\_ % or \$\_\_\_\_\_, whichever is the lesser, the Reseller shall pay forthwith to Canada both the discrepancy and the cost of the audit.

(d) The provisions of this section 6.12 shall continue in full force and effect for a period of two (2) years following expiration or termination of this Agreement.

## **7.0 REPRESENTATIONS, WARRANTIES, INDEMNITIES**

7.1 CANADA MAKES NO REPRESENTATION AND GIVES NO WARRANTY OF ANY KIND WITH RESPECT TO THE ACCURACY, USEFULNESS, NOVELTY, VALIDITY, SCOPE, COMPLETENESS OR CURRENCY OF THE CANADA DIGITAL DATA AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE CANADA DIGITAL DATA.

7.2 The Reseller represents and warrants that:

(a) it is a duly incorporated, validly subsisting corporation, in good standing, incorporated under the laws of \_\_\_\_\_;

(b) it has the corporate power, capacity and resources to enter into, exercise the rights herein granted to it, fully perform and be responsible for its obligations under this Agreement;

(c) there is no pending litigation, action or proceeding before any court, tribunal or person relating to matters that may affect its capacity to fully perform and be responsible for its obligations under this Agreement; and

(d) it has granted the person(s) signing this Agreement on its behalf full power and authority to obligate and bind the corporation for all purposes of this Agreement.

7.3 THE RESELLER SHALL HAVE NO RECOURSE AGAINST CANADA, WHETHER BY WAY OF ANY SUIT OR ACTION OR OTHER, FOR ANY LOSS, LIABILITY, DAMAGE OR COST THAT THE RESELLER MAY SUFFER OR INCUR AT ANY TIME, BY REASON OF THE RESELLER'S POSSESSION OR USE OF THE CANADA DIGITAL DATA, OR ARISING OUT OF THE EXERCISE OF ITS RIGHTS OR THE FULFILMENT OF ITS OBLIGATIONS HEREUNDER.

7.4 THE RESELLER SHALL AT ALL TIMES INDEMNIFY AND HOLD CANADA AND ITS MINISTERS, EMPLOYEES AND AGENTS HARMLESS FROM ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, COSTS, ACTIONS OR OTHER PROCEEDINGS MADE, SUSTAINED, BROUGHT OR PROSECUTED BY ANY PERSON IN ANY MANNER, BASED UPON, OR OCCASIONED BY, OR ATTRIBUTED TO ANY INJURY, INFRINGEMENT OR DAMAGE ARISING OUT OF ANY ACTION OR OMISSION OF THE RESELLER, ARISING FROM ERRONEOUS COMMUNICATION BY THE RESELLER OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE BY THE RESELLER OF ITS RIGHTS AND OBLIGATIONS HEREUNDER, OR ARISING FROM ANY PERMITTED MODIFICATION THE RESELLER MAY HAVE MADE TO THE CANADA DIGITAL DATA, DESCRIBED IN SCHEDULE "D" ATTACHED HERETO.

## **8.0 TERM**

8.1 This Agreement is effective as of the date of the last signature of the Parties and shall remain in effect for a period of \_\_\_\_ (\_\_\_\_) year(s), subject to sections 8.2 and 9.0 below.

8.2 Provided the Reseller is not in breach of any of the terms and conditions of this Agreement at the end of term, this Agreement shall be automatically renewed for successive one (1) year terms, subject to section 9.0 below, unless either Party gives written notice to the other Party of the non-renewal of this Agreement at least thirty (30) days prior to the end of the then-current term.

## **9.0 TERMINATION**

9.1 Notwithstanding section 8.0 above, this Agreement may be terminated prior to its

expiration:

(a) automatically, upon Canada giving thirty (30) days written notice to the Reseller of termination of the Agreement by reason of default, if the Reseller commits or permits a breach of any of its covenants or obligations under this Agreement;

(b) upon written notice of termination given by either Party at any time, and such termination shall take effect thirty (30) days after the receipt by the other Party of such notice; or

(c) upon written agreement of the Parties.

9.2 Upon the expiration or termination of this Agreement, for whatever reason, the obligations of Canada hereunder shall immediately cease, the Reseller's appointment and rights under section 3.0 hereof shall immediately cease and the Reseller shall:

(a) return immediately to Canada the Canada Digital Data and all reproductions thereof and certify in writing to Canada, within thirty (30) days of expiration or termination, that all of the Canada Digital Data has been returned to Canada;

(b) deliver a detailed statement to Canada of the inventory of the Canada Digital Data then existing, but not yet, as of the date of expiration or termination, distributed by the Reseller;

(c) if requested by Canada, dispose of any remaining Canada Digital Data inventory, subject always to any obligations under section 5.0 of this Agreement (*Fees, Royalties And Reporting*);

(d) deliver to Canada the relevant sales reports as prescribed in Schedule "B" attached hereto; and

(e) deliver to Canada all royalties and other monies payable under this Agreement, up to and including the date of expiration or termination of this Agreement.

9.3 Notwithstanding section 9.2 above, the Reseller may, with the prior written approval of Canada, which approval shall be at Canada's sole discretion, continue to distribute Canada Digital Data for the purpose of completing orders made before the expiration or termination date of this Agreement, provided that the Reseller shall:

(a) continue to pay royalties as required under section 5.0 and Schedule "B" attached hereto for any Canada Digital Data distributed to End-Users after expiration or termination of this Agreement, within seven (7) days of the liability being incurred;



(b) continue to comply with the requirements to protect and acknowledge the source, as required under section 4.0; and

(c) continue to fulfill its reporting obligations set out in Schedule “B” attached hereto.

9.4 Notwithstanding the expiration or termination of this Agreement, all agreements entered into by the Reseller in the exercise of its rights hereunder and in conformity with the requirements set out herein, prior to such expiration or termination, and all obligations imposed therein, shall continue in full force and effect subject to their terms.

9.5 All obligations of the Parties which expressly or by their nature survive expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding such expiration or termination, until they are satisfied or by their nature expire. For greater clarity, and without limiting the generality of the foregoing, the following provisions survive expiration or termination of this Agreement:

- (a) section 5.0 (*Fees, Royalties And Reporting*);
- (b) section 6.12 (*Records*);
- (c) section 7.0 (*Representations, Warranties And Indemnities*);
- (d) sections 9.2 and 9.3 (*Effect Of Termination*)

## 10.0 NOTICES

10.1 Any report or notice required or permitted to be given by the Parties under this Agreement shall be in writing and given by delivering it in person or sending it by mail, courier or facsimile, addressed as follows:

if to Canada, to

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

and if to the Reseller, to:

\_\_\_\_\_  
Name

\_\_\_\_\_

Title

\_\_\_\_\_

Address

10.2 Any such report or notice shall be effectively conveyed upon receipt, unless received on a day which is not a business day, in which case it shall be deemed to be received on the next business day. Either Party may change its address from time to time by notice given in accordance with this section, and any subsequent notice must be sent to the Party at its changed address.

## **11.0 PAYMENTS**

11.1 Any payments required to be made to Canada under this Agreement shall be by cheque (in Canadian currency) made payable to the Receiver General for Canada, and delivered to:

11.2 The Reseller shall comply with any further terms and conditions pertaining to payment of monies due and payable to Canada as contained in Schedule "B" attached hereto.

## **12.0 GENERAL PROVISIONS**

### **12.1 Applicable Law**

This Agreement shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws in effect in the Province of Ontario, Canada and in accordance with the federal laws of Canada, as applicable.

### **12.2 Entire Agreement**

This Agreement, including the recitals and Schedules "A", "B", "C" and "D" attached hereto and incorporated herein constitute the entire agreement between the Parties with respect to its subject matter and supersedes any prior agreement or communication of any kind between the Parties. This Agreement may only be amended in writing, signed by both Parties, which expressly states the intention to amend this Agreement.

### 12.3 Alternate Dispute Resolution

If a dispute arises concerning this Agreement, or if a recommended modification of any term of this Agreement cannot be agreed between the Parties, the Parties shall resolve the matter:

- (a) firstly, by negotiation;
- (b) secondly, by mediation by a mutually acceptable mediator; and
- (c) thirdly, by binding arbitration.

### 12.4 No Waiver

No condoning, excusing or overlooking by Canada of any default by the Reseller, at any time or times, in performing or observing any of the Reseller's obligations hereunder, will operate as a waiver, renunciation, surrender of or otherwise affect the rights of Canada in respect of any continuing or subsequent default. No waiver of these rights will be inferred from anything done or omitted by Canada except by an express waiver in writing.

### 12.5 Order of Precedence

If there is a conflict or ambiguity between this Agreement and any schedules thereto, this Agreement shall prevail.

### 12.6 No Joint Venture/Reseller not an Agent or Partner

The Parties expressly disclaim any intention to create a partnership, joint venture or joint enterprise. The Parties acknowledge and agree that nothing contained in this Agreement nor any acts of any Party shall constitute or be deemed to constitute the parties as partners, joint venturers or principal and agent in any way or for any purpose. No Party has the authority to act for, or to assume any obligation or responsibility on behalf of the other Party.

12.7 No updates

Canada assumes no obligation or liability whatsoever for the provision of updates to the Canada Digital Data.

In acceptance of the foregoing, the Parties have apposed their signatures as follows:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, as  
represented by the Minister of \_\_\_\_\_ ,

by: \_\_\_\_\_

(signature)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(title)

\_\_\_\_\_  
(date)

**RESELLER' FULL CORPORATE NAME**

by: \_\_\_\_\_

(signature)

\_\_\_\_\_  
(printed name )

\_\_\_\_\_  
(title)

\_\_\_\_\_  
(date)



**SCHEDULE “A”  
to the Reseller Agreement**

**DESCRIPTION OF CANADA DIGITAL DATA**

**SCHEDULE “B”  
to the Reseller Agreement**

**FEES, ROYALTIES AND REPORTING**

**CONSULT YOUR INTELLECTUAL PROPERTY OFFICE AND/OR YOUR  
LEGAL ADVISORS BEFORE COMPLETING THIS SCHEDULE.**

Canada may require the Reseller to pay a fee upon execution of the Reseller Agreement. In addition, Canada may also require the payment of royalties. Fees and royalties would be set out in this schedule.

Royalties may be structured in a number of ways, including through a combination of fixed payments made over time (regardless of the volume of sales or sublicences granted), and royalties based on the number of sublicences actually granted. Provisions may also exist for payment of a percentage of the revenues received by the Reseller from its customers.

Clarity in the calculation of royalty fees is crucial. For example, if royalty fees are not based solely on a “per unit” basis, but rather on a percentage of net income or some other accounting term, it becomes imperative that such term be clearly defined in the licence agreement. It is also important to specify whether the royalties will be based on Gross Revenues or Net Revenues (terms to be defined in this schedule). In the event it is the latter, it will be important to give particular attention to the allowable deductions.

The inclusion of reporting obligations and audit/verification rights of Canada are of particular significance in instances where a licence is royalty-bearing. The Reseller may, for instance, be required to report to Canada quarterly on its net sales, etc., concurrent with periodic royalty payments and Canada would want to reserve the right to inspect the Reseller’s books to confirm the accuracy of the Reseller’s reports.

In addition to detailing how royalty payments will be calculated, it would also be appropriate to set out in this Schedule the mechanism for payment. How is payment of the royalties to be made? By cheque, wire transfer? Who are the contracting parties’ representatives? Contact info?



**SCHEDULE “C”  
to the Reseller Agreement**

**Permitted Modifications to the Canada Digital Data**

**SCHEDULE “D”  
to the Reseller Agreement**

**Terms and conditions for incorporation into  
end-use licence agreements between Reseller and End-Users**

For ease of reference and unless otherwise indicated, capitalized words contained herein shall have the meaning ascribed to them in the Reseller Agreement.

The Reseller shall ensure that all of its licence agreements with End-Users for its products are end-use licence agreements which expressly prohibit further distribution by the End-Users of Canada Digital Data, in whole or in part, and contain the following terms and conditions, and any other terms and conditions as may be required by Canada from time to time.

1. Her Majesty the Queen in Right of Canada (“Canada”) is the owner, or a licensee, of Intellectual Property Rights \_\_\_\_\_ [*insert product name*]. With your payment of the requisite fee (the “Licence Fee”) you are hereby granted a non-exclusive, non-assignable licence to exercise such of Canada’s Intellectual Property Rights in \_\_\_\_\_ [*insert product name*] as is necessary to use, reproduce, extract, modify, translate and further develop \_\_\_\_\_ [*insert product name*], FOR YOUR OWN PERSONAL USE ONLY. You may also manufacture and distribute, or cause to be manufactured and distributed, derived products, provided that such derived products do not incorporate or reproduce any of \_\_\_\_\_ [*insert product name*], in whole or in part.

2. This licence is an end-use licence only. Distribution of \_\_\_\_\_ [*insert product name*], in whole or in part, or of a derived product incorporating \_\_\_\_\_ [*insert product name*], in whole or in part, is expressly prohibited.

3. Sections 1 and 2 above shall not be construed or deemed to prohibit reproduction, publication, communication or redistribution of \_\_\_\_\_ [*insert product name*] or parts thereof:

(a) for the purposes of research or private study, criticism or review or news reporting, as contemplated by sections 29, 29.1 and 29.2 of the *Copyright Act*, R.S.C 1985, C-42; or

(b) by an educational institution, as defined in the *Copyright Act*, and for the purposes set out in section 29.4 of the *Copyright Act*,

provided in all instances the source is acknowledged in all such documents or communications in the following manner:



“Source (or “Adapted from”, if appropriate): \_\_\_\_\_ [insert product name].

\_\_\_\_\_ [insert product name] is distributed with the permission of [applied title of government department]”

4. All copyright, other proprietary notices of Canada and metadata appearing on or incorporated into \_\_\_\_\_ [insert product name], as well as any and all conditions of use associated with \_\_\_\_\_ [insert product name], shall be incorporated and maintained on all reproductions of \_\_\_\_\_ [insert product name].

5. You shall not disassemble, decompile or in any way attempt to reverse engineer \_\_\_\_\_ [insert product name] or any part thereof.

6. You shall not merge or link \_\_\_\_\_ [insert product name] with any product or database in such a fashion that gives the appearance that you may have received, or had access to, information held by Canada about any identifiable individual, family, household, organization or business.

7. \_\_\_\_\_ [insert product name] is provided on an ‘as-is’ basis. You acknowledge and agree that Canada has made no representation or warranty of any kind with respect to the accuracy, usefulness, novelty, validity, scope, completeness or currency of \_\_\_\_\_ [insert product name] or any elements therein contained and has expressly disclaimed any implied warranty of merchantability or fitness for a particular purpose of \_\_\_\_\_ [insert product name].

8. You shall have no recourse against Canada, whether by way of any suit or action or other, for any loss, liability, damage or cost that you may suffer or incur at any time, by reason of your possession or use of \_\_\_\_\_ [insert product name].

## APPENDIX F

### Value-Added Reseller Agreement For Government Geographic Data

This Value-Added Reseller Agreement

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,**  
as represented by the Minister of \_\_\_\_\_ (“Canada”)

**AND:**

\_\_\_\_\_ a corporation incorporated under the laws of  
\_\_\_\_\_, having its head office in \_\_\_\_\_ (the “Value-Added Reseller”)

**WITNESSES THAT:**

- I. WHEREAS** Canada is the owner, or licensee, of Intellectual Property Rights in and to Canada Digital Data, as described in Schedule “A” attached hereto;
- II. AND WHEREAS** the Value-Added Reseller is interested in acquiring certain rights to the Canada Digital Data, in accordance with the terms and conditions contained herein; and
- III. AND WHEREAS** Canada is willing to grant to the Value-Added Reseller certain rights to the Canada Digital Data, in accordance with the terms and conditions contained herein;

**NOW THEREFORE**, in consideration of the covenants contained in this Agreement, the Parties agree as follows:

#### **1.0 DEFINITIONS**

1.1 “**Agreement**” means this Value-Added Reseller Agreement, its recitals and all schedules attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

1.2 “**Canada’s Data**” means that Data contained in the Canada Digital Data, the Intellectual Property Rights of which vest in Canada.

1.3 “**Canada Digital Data**” means the digital Data, metadata and related documentation described in Schedule “A” attached hereto, provided by Canada to the Value-Added Reseller for the purposes of developing and distributing VAR Products on an end-use basis, in accordance with the terms and conditions of this Agreement . Canada’s Data is contained in the Canada Digital Data. Canada Digital Data may also contain Data, the Intellectual Property Rights of which vest with third parties, and which is licensed to Canada.

1.4 “**Data**” means any expressed original data fixed in a form giving rise to Intellectual Property Rights, such as described in Schedule “A” attached hereto.

1.5 “**End-Users**” means an individual, corporation or organisation to which the Value-Added Reseller licenses, on an end-use basis, all or part of the Canada Digital Data, in accordance with the terms and conditions of this Agreement, including those set out in Schedule “D” attached hereto.

1.6 “**Intellectual Property Rights**” means any and all intellectual property rights recognized by the law, including intellectual property rights protected through legislation.

1.7 “**Market**” means (describe the targeted clientele).

1.8 “**Party**” means either one of the signatories to this Agreement and includes their respective servants, agents and employees. “**Parties**” means the signatories to this Agreement and includes their respective servants, agents and employees.

1.9 “**Territory**” means the geographical territory designated in Schedule “C” attached hereto.

1.10 “**VAR Products**” means any product, system, subsystem, device, component, material or software developed or manufactured, or caused to be developed or manufactured, by the Value-Added Reseller in the exercise of its rights under this Agreement. Such VAR Products may be developed or manufactured by constructing, deriving, developing, adapting, incorporating or by any other means using the Canada Digital Data, in whole or in part.

## **2.0 INTELLECTUAL PROPERTY RIGHTS**

2.1 Subject to section 2.2 hereof, and without affecting Canada’s Intellectual Property Rights in and to Canada’s Data and any third-party’s Intellectual Property Rights in Data contained in the Canada Digital Data, all Intellectual Property Rights in and to VAR Products shall at all times vest with the Value-Added Reseller or in such person as the Value-Added Reseller shall decide.

2.2 All Intellectual Property Rights in and to Canada's Data shall at all times remain the property of Canada. All Intellectual Property Rights in and to Data contained in the Canada Digital Data which is not Canada's Data are the property of the respective content owners and may be protected by copyright, other intellectual property laws, common law or international treaties.

### **3.0 LICENCE GRANT**

3.1 Subject to this Agreement, and in consideration of the payment of royalties as provided hereunder, Canada hereby grants to the Value-Added Reseller a non-exclusive, non-assignable licence to use, reproduce, extract, modify, translate and further develop the Canada Digital Data, in the Territory, as is necessary for the purposes of:

- (a) integrating the Canada Digital Data, in whole or in part, into existing VAR Products;
- (b) making or causing to be made new VAR Products;
- (c) licensing to End-Users such of the Canada Digital Data as is incorporated into VAR Products, provided:
  - i) any and all reproductions of the Canada Digital Data shall include the notice provided in section 4.1 and shall carry the caveat contained in section 7.1 hereof; and
  - ii) all distributions to End-Users shall be on an end-use basis and shall be evidenced by a written end-use licence agreement containing the terms and conditions set out in Schedule "D" attached hereto.
- (d) demonstration and marketing to the Market,

for the whole of the period of time described in section 8.0 (*Term*).

3.2 The Value-Added Reseller shall not sublicense to a third party any of the rights conferred to it pursuant to section 3.1 above.

3.3 The Value-Added Reseller shall not disassemble, decompile or in any way attempt to reverse engineer the Canada Digital Data or any part thereof, and the Value-Added Reseller shall not merge or link the Canada Digital Data with any product or database in such a fashion that gives the appearance that the Value-Added Reseller may have received or had access to, information held by Canada about any identifiable individual, family, household, organization or business.

#### **4.0 PROTECTION AND ACKNOWLEDGEMENT OF SOURCE**

4.1 The Value-Added Reseller shall include on all VAR Products containing any of the Canada Digital Data, in a prominent location, the following notice:

*This product has been produced by or for (name of the Value-Added Reseller) based on data provided by \_\_\_\_\_ (department's applied title)*

*The incorporation of data sourced from \_\_\_\_\_ (department's applied title) within this product shall not be construed as constituting an endorsement by \_\_\_\_\_ (department's applied title) of such product.*

or any other notice approved in writing by Canada.

4.2 The Value-Added Reseller shall ensure that no acknowledgment of Canada, except as permitted under section 4.1 above, shall be shown in association with any form of promotion or advertisement of VAR Products. The Value-Added Reseller shall not include in its promotion materials:

(a) the name, crest, logos, flags or other insignia or domain names of Canada, without the prior written approval of Canada, which approval may be refused at Canada's sole discretion; or

(b) any annotation of any kind that may be interpreted as an endorsement by Canada of the Value-Added Products.

#### **5.0 FEES, ROYALTIES and REPORTING**

5.1 The Value-Added Reseller shall pay to Canada the fees and/or royalties prescribed in Schedule "B" attached hereto and comply with all requirements therein set out.

#### **6.0 OBLIGATIONS OF THE VALUE-ADDED RESELLER**

6.1 The Value-Added Reseller shall exercise due care, skill and diligence in marketing, distributing or otherwise making the Canada Digital Data available to the Market.

6.2 The Value-Added Reseller shall take all reasonable precautions and actions to ensure that the Canada Digital Data is not marketed, distributed or otherwise made available to the Market except in accordance with the terms of this Agreement.

6.3 The Value-Added Reseller shall diligently monitor and enforce any and all

agreements it enters into with its End-Users.

6.4 The Value-Added Reseller shall promptly notify Canada of any infringement by third parties of the Canada Digital Data when such becomes known to the Value-Added Reseller and where possible provide a sample of such infringement and co-operate with Canada in enforcing Canada's Intellectual Property Rights against the infringer. The Value-Added Reseller shall not institute any suit or take any action on account of any such infringements without Canada's prior written consent.

6.5 The Value-Added Reseller shall ensure that there are no contradictions or inconsistencies between the terms and conditions set out in Schedule "D" attached hereto, and the other terms and conditions to be included in the end-use licence agreement to be entered into with End-Users. The Value-Added Reseller shall do nothing to violate or encourage violation of the terms and conditions set out in Schedule "D" hereto, and shall diligently report to Canada any actual or suspected violation of such terms and conditions.

6.6 The Value-Added Reseller shall, when it has knowledge that an End-User's intended use of the Canada Digital Data falls outside the terms and conditions set out in Schedule "D" attached hereto, promptly refer such End-User to Canada.

6.7 The Value-Added Reseller shall not use any identifier or mark of Canada, or the name of \_\_\_\_\_ (insert department's applied title) in a manner that would imply that the Value-Added Reseller has an exclusive distribution arrangement for any or all of the Canada Digital Data, or that the Value-Added Reseller has access to any confidential information or information not available to any other party.

6.8 The Value-Added Reseller shall not engage in any conduct nor use the Canada Digital Data in any way which, in the opinion of Canada, may bring disrepute to or prejudice the reputation of Canada.

6.9 The Value-Added Reseller shall supply to Canada, prior to its use or publication, a copy of all recommended marketing and promotional literature that in any way relates to the Canada Digital Data or to the relationship between the Value-Added Reseller and Canada. Canada shall notify the Value-Added Reseller of any required changes within seven (7) days of receipt of the materials. The Value-Added Reseller shall make all changes to such materials as Canada, in its discretion, deems advisable.

6.10 The Value-Added Reseller shall promptly notify Canada of any action or proceeding or any event that may affect its ability and capacity to exercise its licensed rights and fulfill its obligations under this Agreement.

6.11 (a) The Value-Added Reseller shall keep true and accurate records, using generally accepted accounting principles, and maintain such records during the term of this Agreement and for a period of two (2) years following the expiration or termination of this Agreement. Such records shall provide sufficiently detailed information to allow

Canada to calculate and easily audit any payment required to be made to Canada under this Agreement and ascertain fulfilment of all other obligations of the Value-Added Reseller under this Agreement.

(b) The Value-Added Reseller shall provide access to Canada, or its authorized auditors, to its premises, during reasonable working hours, to make periodic audits of its records, relevant to the determination of fees and/or royalties payable to Canada under this Agreement and otherwise pertaining to the Value-Added Reseller's obligations under this Agreement.

(c) The Value-Added Reseller shall allow Canada, or its authorized auditors, to make any necessary copies of the records, as Canada or its authorized auditors deem fit. Canada shall provide at least two (2) working days notice of such audits.

(d) In the event of any discrepancy uncovered by an audit as between the fees and/or royalties that should have been paid to Canada and those that have been paid to Canada, which discrepancy is in excess of \_\_\_\_ % or \$\_\_\_\_\_, whichever is the lesser, the Value-Added Reseller shall pay forthwith to Canada both the discrepancy and the cost of the audit.

(e) The provisions of this subsection 6.12 shall continue in full force and effect for a period of two (2) years following expiration or termination of this Agreement.

## **7.0 REPRESENTATIONS, WARRANTIES, INDEMNITIES**

7.1 CANADA MAKES NO REPRESENTATION AND GIVES NO WARRANTY OF ANY KIND WITH RESPECT TO THE ACCURACY, USEFULNESS, NOVELTY, VALIDITY, SCOPE, COMPLETENESS OR CURRENCY OF THE CANADA DIGITAL DATA AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE CANADA DIGITAL DATA.

7.2 The Value-Added Reseller represents and warrants that:

(a) it is a duly incorporated, validly subsisting corporation, in good standing, incorporated under the laws of \_\_\_\_\_;

(b) it has the corporate power, capacity and resources to enter into, exercise the rights herein granted to it, fully perform and be responsible for its obligations under this Agreement;

(c) there is no pending litigation, action or proceeding before any court, tribunal or person relating to matters that may affect its capacity to fully perform and be responsible for its obligations under this Agreement; and

(d) it has granted the person(s) signing this Agreement on its behalf full power

and authority to obligate and bind the corporation for all purposes of this Agreement.

7.3 THE VALUE-ADDED RESELLER SHALL HAVE NO RECOURSE AGAINST CANADA, WHETHER BY WAY OF ANY SUIT OR ACTION OR OTHER, FOR ANY LOSS, LIABILITY, DAMAGE OR COST THAT THE VALUE-ADDED RESELLER MAY SUFFER OR INCUR AT ANY TIME, BY REASON OF THE VALUE-ADDED RESELLER'S POSSESSION OR USE OF THE CANADA DIGITAL DATA, OR ARISING OUT OF THE EXERCISE OF ITS RIGHTS OR THE FULFILMENT OF ITS OBLIGATIONS HEREUNDER.

7.4 THE VALUE-ADDED RESELLER SHALL AT ALL TIMES INDEMNIFY AND HOLD CANADA AND ITS MINISTERS, EMPLOYEES AND AGENTS HARMLESS FROM ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, COSTS, ACTIONS OR OTHER PROCEEDINGS MADE, SUSTAINED, BROUGHT OR PROSECUTED BY ANY PERSON IN ANY MANNER, BASED UPON, OR OCCASIONED BY, OR ATTRIBUTED TO ANY INJURY, INFRINGEMENT OR DAMAGE ARISING OUT OF ANY ACTION OR OMISSION OF THE VALUE-ADDED RESELLER, ARISING FROM ERRONEOUS COMMUNICATION BY THE VALUE-ADDED RESELLER, OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE BY THE VALUE-ADDED RESELLER OF ITS RIGHTS AND OBLIGATIONS HEREUNDER, OR ARISING FROM THE MANUFACTURE, PUBLICATION, DISTRIBUTION OR THE USE OF VAR PRODUCTS.

## **8.0 TERM**

8.1 This Agreement is effective as of the date of the last signature of the Parties and shall remain in effect for a period of \_\_\_\_ (\_\_\_\_) year(s), subject to sections 8.2 and 9.0 below.

8.2 Provided the Value-Added Reseller is not in breach of any of the terms and conditions of this Agreement at the end of the term, this Agreement shall be automatically renewed for successive one (1) year terms, subject to section 9.0 below, unless either Party gives written notice to the other Party of the non-renewal of this Agreement at least thirty (30) days prior to the end of the then-current term.

## **9.0 TERMINATION**

9.1 Notwithstanding section 8.0 above, this Agreement may be terminated prior to its expiration:

- (a) automatically, upon Canada giving thirty (30) days written notice to the Value-Added Reseller of termination of the Agreement by reason of default, if the Value-Added Reseller commits or permits a breach of any of the terms and conditions of this Agreement;



(b) upon written notice of termination given by either Party at any time, and such termination shall take effect thirty (30) days after the receipt by the other Party of such notice; or

(c) upon written agreement of the Parties.

9.2 Upon the expiration or termination of this Agreement, for whatever reason, the obligations of Canada hereunder shall immediately cease, the Value-Added Reseller's rights under section 3 hereof shall immediately cease, and the Value-Added Reseller shall:

(a) return immediately to Canada the Canada Digital Data and all reproductions thereof that have not been incorporated into VAR Products prior to the date of expiration or termination of this Agreement, and certify in writing to Canada, within thirty (30) days of expiration or termination, that all of such Canada Digital Data has been returned to Canada;

(b) deliver a detailed statement to Canada of the inventory of the Canada Digital Data and of VAR Products then existing, but not yet, as of the date of expiration or termination of this Agreement, distributed by the Value-Added Reseller;

(c) dispose of any remaining Canada Digital Data and of VAR Products inventory as specified by Canada, subject always to any obligations under section 5 of this Agreement (*Fees, Royalties And Reporting*);

(d) deliver to Canada the relevant sales reports as prescribed in Schedule "B" attached hereto; and

(e) deliver to Canada all royalties and other monies payable under this Agreement, up to and including the date of expiration or termination of this Agreement.

9.3 Notwithstanding section 9.2 above, the Value-Added Reseller may, with the prior written approval of Canada, which approval shall be at Canada's sole discretion, continue to distribute VAR Products for the purpose of completing orders made before the expiration or termination date of this Agreement, provided the Value-Added Reseller shall:

(a) continue to pay royalties as required under section 5.0 and Schedule "B" attached hereto for any VAR Product distributed to End-Users after expiration or termination of this Agreement, within seven (7) days of the liability being incurred;

(b) continue to comply with the requirements to protect and acknowledge the source, as required under section 4.0; and

(c) continue to fulfill its reporting obligations set out in Schedule “B” attached hereto.

9.4 Notwithstanding the expiration or termination of this Agreement, all agreements entered into prior to such expiration or termination by the Value-Added Reseller, in the exercise of its rights and in conformity with the requirements set out herein, and all obligations imposed therein shall continue in full force and effect subject to their terms.

9.5 All obligations of the Parties which expressly or by their nature survive expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding such expiration or termination, until they are satisfied or by their nature expire. For greater clarity, and without limiting the generality of the foregoing, the following provisions survive expiration or termination of this Agreement:

- (a) section 4.0 (*Protection And Acknowledgement Of Source*);
- (b) section 5.0 (*Fees, Royalties and Reporting*);
- (c) section 6.11 (*Records*);
- (d) section 7.0 (*Representations, Warranties and Indemnities*);
- (e) sections 9.2 and 9.3 (*Effect of Termination*).

## 10.0 NOTICES

10.1 Any report or notice required or permitted to be given by the Parties under this Agreement shall be in writing and given by delivering it in person, or sending it by mail, courier or facsimile addressed as follows:

if to Canada, at:

and if to the Value-Added Reseller, at:

10.2 Any such report or notice shall be effectively conveyed upon receipt, unless received on a day which is not a business day, in which case it shall be deemed to be received on the next business day. Either Party may change its address from time to time by notice given in accordance with this section, and any subsequent notice must be sent to the Party at its changed address.

## **11.0 PAYMENTS**

11.1 Any payments required to be made to Canada under this Agreement shall be by cheque (in Canadian currency) made payable to the Receiver General for Canada, and delivered to:

11.2 The Value-Added Reseller shall comply with any further terms and conditions pertaining to payment of monies due and payable to Canada as contained in Schedule “B” attached hereto.

## **12.0 GENERAL PROVISIONS**

### **12.1 Applicable Law**

This Agreement shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws in effect in the Province of Ontario, and the laws of Canada, as applicable.

### **12.2 Entire Agreement**

This Agreement, including the recitals and Schedules “A”, “B”, “C” and “D” attached hereto and incorporated herein constitute the entire agreement between the Parties with respect to its subject matter and supersedes any prior agreement or communication of any kind between the Parties. This Agreement may only be amended in writing, signed by both Parties, which expressly states the intention to amend this Agreement.

### **12.3 Alternate Dispute Resolution**

If a dispute arises concerning this Agreement, or if a recommended modification of any term of this Agreement cannot be agreed between the Parties, the Parties shall resolve the matter:

- (a) firstly, by negotiation;
- (b) secondly, by mediation by a mutually acceptable mediator; and
- (c) thirdly, by binding arbitration.

### **12.4 No Waiver**

No condoning, excusing or overlooking by Canada of any default by the Value-Added

Reseller, at any time or times, in performing or observing any of the Value-Added Reseller's obligations hereunder, will operate as a waiver, renunciation, surrender of or otherwise affect the rights of Canada in respect of any continuing or subsequent default. No waiver of these rights will be inferred from anything done or omitted by Canada except by an express waiver in writing.

#### 12.5 Order of Precedence

If there is a conflict or ambiguity between this Agreement and any schedules thereto, this Agreement shall prevail.

#### 12.6 No Joint Venture/Value-Added Reseller not an Agent or Partner

The Parties expressly disclaim any intention to create a partnership, joint venture or joint enterprise. The Parties acknowledge and agree that nothing contained in this Agreement nor any acts of any Party shall constitute or be deemed to constitute the Parties as partners, joint venturers or principal and agent in any way or for any purpose. No Party has the authority to act for, or to assume any obligation or responsibility on behalf of the other Party.

12.7 No updates

Canada assumes no obligation or liability whatsoever for the provision of updates to the Canada Digital.

In acceptance of the foregoing, the Parties have apposed their signatures as follows:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, as  
represented by the Minister of \_\_\_\_\_ ,

by: \_\_\_\_\_

(signature)

\_\_\_\_\_

(printed name)

\_\_\_\_\_

(title)

\_\_\_\_\_

(date)

**VALUE-ADDED RESELLER' FULL CORPORATE NAME**

by: \_\_\_\_\_

(signature)

\_\_\_\_\_

(printed name)

\_\_\_\_\_

(date)



**SCHEDULE “A”  
to the Value-Added Reseller Agreement**

**DESCRIPTION OF CANADA DIGITAL DATA**

**SCHEDULE “B”  
to the Value-Added Reseller Agreement**

**FEES, ROYALTIES  
AND REPORTING**

**CONSULT YOUR INTELLECTUAL PROPERTY OFFICE AND/OR YOUR  
LEGAL ADVISORS BEFORE COMPLETING THIS SCHEDULE.**

Canada may require the Value-Added Reseller to pay a fee upon execution of the Value-Added Reseller Agreement. In addition, Canada may also require the payment of royalties. Fees and royalties would be set out in this schedule.

Royalties may be structured in a number of ways, including through a combination of fixed payments made over time (regardless of the volume of sales or sublicences granted), and royalties based on the number of sublicences actually granted. Provisions may also exist for payment of a percentage of the revenues received by the Value-Added Reseller from its customers.

Clarity in the calculation of royalty fees is crucial. For example, if royalty fees are not based solely on a “per unit” basis, but rather on a percentage of net income or some other accounting term, it becomes imperative that such term be clearly defined in the licence agreement. It is also important to specify whether the royalties will be based on Gross Revenues or Net Revenues (terms to be defined in this schedule). In the event it is the latter, it will be important to give particular attention to the allowable deductions.

The inclusion of reporting obligations and audit/verification rights of Canada are of particular significance in instances where a licence is royalty-bearing. The value-Added Reseller may, for instance, be required to report to Canada quarterly on its net sales, etc., concurrent with periodic royalty payments and Canada would want to reserve the right to inspect the Value-Added Reseller’s books to confirm the accuracy of the Value-Added Reseller’s reports.

In addition to detailing how royalty payments will be calculated, it would also be appropriate to set out in this Schedule the mechanism for payment. How is payment of the royalties to be made? By cheque, wire transfer? Who are the contracting parties’ representatives? Contact info?



**SCHEDULE “C”  
to the Value-Added Reseller Agreement**

**TERRITORY**



**SCHEDULE “D”  
to the Value-Added Reseller Agreement**

**Terms and conditions for incorporation into  
end-use agreements between Value-Added Reseller and End-Users**

For ease of reference and unless otherwise indicated, capitalized words contained herein shall have the meaning ascribed to them in the Value-Added Reseller Agreement.

The Value-Added Reseller shall ensure that all of its licence agreements with End-Users for its products are end-use licence agreements which expressly prohibit further distribution by the End-Users of Canada Digital Data embedded in VAR Products, and contain the following terms and conditions, and any other terms and conditions as may be required by Canada from time to time.

1. Her Majesty the Queen in Right of Canada (“Canada”) is the owner, or a licensee, of Intellectual Property Rights in \_\_\_\_\_ [*insert product name*]. With your payment of the requisite fee (the “Licence Fee”) you are hereby granted a non-exclusive, non-assignable licence to exercise such of Canada’s Intellectual Property Rights in \_\_\_\_\_ [*insert product name*] as is necessary to use, reproduce, extract, modify, translate and further develop \_\_\_\_\_ [*insert product name*], FOR YOUR OWN PERSONAL USE ONLY. You may also manufacture and distribute, or cause to be manufactured and distributed, derived products, provided that such derived products do not incorporate or reproduce any of \_\_\_\_\_ [*insert product name*], in whole or in part.

2. This licence is an end-use licence only. Distribution of \_\_\_\_\_ [*insert product name*], in whole or in part, or of a derived product incorporating \_\_\_\_\_ [*insert product name*], in whole or in part, is expressly prohibited.

3. Sections 1 and 2 above shall not be construed or deemed to prohibit reproduction, publication, communication or redistribution of \_\_\_\_\_ [*insert product name*] or parts thereof:

(a) for the purposes of research or private study, criticism or review or news reporting, as contemplated by sections 29, 29.1 and 29.2 of the *Copyright Act*, R.S.C 1985, C-42; or

(b) by an educational institution, as defined in the *Copyright Act*, and for the purposes set out in section 29.4 of the *Copyright Act*,

provided in all instances the source is acknowledged in the following manner:

“Source (or “Adapted from”, if appropriate): \_\_\_\_\_ [*insert product name*].

\_\_\_\_\_ [insert product name] is distributed with the permission of [applied title of government department]”

4. All copyright, other proprietary notices of Canada and metadata appearing on or incorporated into \_\_\_\_\_ [insert product name], as well as any and all conditions of use associated with \_\_\_\_\_ [insert product name], shall be incorporated and maintained on all reproductions of \_\_\_\_\_ [insert product name].
5. You shall not disassemble, decompile or in any way attempt to reverse engineer \_\_\_\_\_ [insert product name] or any part thereof.
6. You shall not merge or link \_\_\_\_\_ [insert product name] with any product or database in such a fashion that gives the appearance that you may have received, or had access to, information held by Canada about any identifiable individual, family, household, organization or business.
7. \_\_\_\_\_ [insert product name] is provided on an ‘as-is’ basis. You acknowledge and agree that Canada has made no representation or warranty of any kind with respect to the accuracy, usefulness, novelty, validity, scope, completeness or currency of \_\_\_\_\_ [insert product name] or any elements therein contained and has expressly disclaimed any implied warranty of merchantability or fitness for a particular purpose of \_\_\_\_\_ [insert product name].
8. You shall have no recourse against Canada, whether by way of any suit or action or other, for any loss, liability, damage or cost that you may suffer or incur at any time, by reason of your possession or use of \_\_\_\_\_ [insert product name].

## APPENDIX G

### Unrestricted Use Memorandum Of Agreement For The Exchange Of Scientific Data Pertaining To \_\_\_\_\_

BETWEEN

\_\_\_\_\_ (applied title of Department "X")  
with offices located at \_\_\_\_\_ ("X")

and

\_\_\_\_\_ (applied title of Department "Y")  
with offices located at \_\_\_\_\_ ("Y")

### BACKGROUND

1. Both X and Y (referred to collectively as the "Departments" or individually as the "Department") collect scientific data relating to \_\_\_\_\_ in the fulfilment of their respective mandates. This includes the scientific data described in Schedule "A" to this Memorandum of Agreement ("MOA"), collected by X ( the "X Scientific Data"); and the scientific data described in Schedule "B" to this MOA, collected by Y (the "Y Scientific Data").

2. X and Y wish to share their respective Scientific Data for the purpose of:

\_\_\_\_\_  
\_\_\_\_\_

3. The purpose of this MOA is to outline the roles and responsibilities of X and Y with respect to the sharing and use of each other's Scientific Data.

### RESPONSIBILITIES

1. X will make the X Scientific Data and all associated metadata and documentation available electronically to Y, in existing formats, in accordance with a mutually agreed upon schedule.

2. Y will make the Y Scientific Data and all associated metadata and documentation available electronically to X, in existing formats, in accordance with a mutually agreed upon schedule.

### INTELLECTUAL PROPERTY RIGHTS

3. X has the administration and control of all intellectual property rights in the X





**DISPUTE RESOLUTION**

22. Any disputes regarding the interpretation or implementation of this MOA will be resolved by consultation between the Departments.

**NON-EXCLUSIVITY AND NON-BINDING**

23. This MOA is not exclusive. Nothing in this MOA prevents either Department from entering into similar arrangements with other parties. This MOA does not constitute or create, and shall not be deemed to constitute, any legally binding or enforceable obligations on the part of either Department.

\_\_\_\_\_  
Director General  
Branch  
Department of \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Director General  
Branch  
Department of \_\_\_\_\_

\_\_\_\_\_  
Date



**SCHEDULE "A"**

**DESCRIPTION OF THE X SCIENTIFIC DATA**



**SCHEDULE "B"**

**DESCRIPTION OF THE Y SCIENTIFIC DATA**



**APPENDIX H**

**End-Use Memorandum Of Agreement For The Exchange Of Scientific Data  
Pertaining To \_\_\_\_\_**

**BETWEEN**

\_\_\_\_\_ (applied title of Department "X")  
with offices located at \_\_\_\_\_ ("X")

**and**

\_\_\_\_\_ (applied title of Department "Y")  
with offices located at \_\_\_\_\_ ("Y")

**BACKGROUND**

1. Both X and Y (referred to collectively as the "Departments" or individually as the "Department") collect scientific data relating to \_\_\_\_\_ in the fulfilment of their respective mandates. This includes the scientific data described in Schedule "A" to this Memorandum of Agreement ("MOA"), collected by X ( the "X Scientific Data"); and the scientific data described in Schedule "B" to this MOA, collected by Y (the "Y Scientific Data").

2. X and Y wish to share their respective Scientific Data for the purpose of:

\_\_\_\_\_  
\_\_\_\_\_

3. The purpose of this MOA is to outline the roles and responsibilities of X and Y with respect to the sharing and use of each other's Scientific Data.

**RESPONSIBILITIES**

4. X will make the X Scientific Data and all associated metadata and documentation available electronically to Y, in existing formats, in accordance with a mutually agreed upon schedule.

5. Y will make the Y Scientific Data and all associated metadata and documentation available electronically to X, in existing formats, in accordance with a mutually agreed upon schedule.

## **INTELLECTUAL PROPERTY RIGHTS**

6. X has the administration and control of all intellectual property rights in the X Scientific Data and will at all times retain such administration and control notwithstanding that it may share the X Scientific Data with Y.

7. Y has the administration and control of all intellectual property rights in the Y Scientific Data and will at all times retain such administration and control notwithstanding that it may share the Y Scientific Data with X.

8. All intellectual property rights in products developed by X as a result of its use, analysis or interpretation of the Y Scientific Data (“X Derived Products”) will vest in Her Majesty the Queen in Right of Canada. X will retain the administration and control over X Derived Products. X Derived Products cannot contain the Y Scientific Data, in whole or in part.

9. All intellectual property rights in products developed by Y as a result of its use, analysis or interpretation of the X Scientific Data (“Y Derived Products”) will vest in Her Majesty the Queen in Right of Canada. Y will retain the administration and control over Y Derived Products. Y Derived Products cannot contain the X Scientific Data, in whole or in part.

## **PERMITTED USES**

10. X may reproduce, adapt and modify the Y Scientific Data for the purposes of \_\_\_\_\_ and for the purpose of creating and disseminating X Derived Products.

11. X will retain the metadata provided with the Y Scientific Data on all copies of the Y Scientific Data.

12. X will acknowledge Y as a data source:

- (a) on all copies it makes of the Y Scientific Data;
- (b) in all metadata for X Derived Products that are based on Y Scientific Data;
- (c) on all communication materials pertaining to \_\_\_\_\_,

in the following manner:

[ ]

13. Y may reproduce, adapt and modify the X Scientific Data for the purposes of \_\_\_\_\_ and for the purpose of creating and disseminating Y Derived Products.

14. Y will retain the metadata provided with the X Scientific Data on all copies of the X Scientific Data.

15. Y will acknowledge X as a data source:

- (a) on all copies it makes of the X Scientific Data;
- (b) in all metadata for Y Derived Products that are based on X Scientific Data;
- (c) on all communication materials pertaining to \_\_\_\_\_,

in the following manner:

[ ]

#### **RESTRICTIONS ON USE**

16. Neither X nor Y will:

- (a) use the other's Scientific Data for commercial purposes;
- (b) disassemble, decompile or in any way attempt to reverse engineer software associated with the other's Scientific Data;
- (c) post on a website or otherwise communicate, by any means whatsoever, the other's Scientific Data or any part thereof, or issue a licence pertaining to the other's Scientific Data, to a third party, including to another federal department or agency, for any purpose whatsoever,

without the prior written approval of the department that has the administration and control of the Scientific Data.

#### **FINANCIAL ARRANGEMENTS**

17. Each Department will bear its own costs associated with carrying out the terms of this MOA.

#### **TERM**

18. This MOA comes into effect when signed by both Departments, and remains in

effect for \_\_\_\_\_ (\_\_\_) years (the “Term”), unless terminated earlier,

(a) by mutual written consent; or

(b) by termination by either Department, on 60 days written notice to the other Department.

19. Provided the Departments are abiding by the restrictions set out in this MOA at the end of the Term, this MOA shall be automatically extended for successive one (1) year terms, subject to section 18 above.

20. All restrictions on the use of the Scientific Data set out above shall survive termination.

#### **AMENDMENT**

21. This MOA may be amended only with the mutual written consent of the Departments.

#### **LIABILITY**

22. Each Department agrees to take responsibility for its own costs and liability for damages arising out of its own negligence.

#### **DISPUTE RESOLUTION**

23. Any disputes regarding the interpretation or implementation of this MOA will be resolved only by consultation between the Departments.

**NON-EXCLUSIVITY AND NON-BINDING**

24. This MOA is not exclusive. Nothing in this MOA prevents either Department from entering into similar arrangements with other parties. This MOA does not constitute or create, and shall not be deemed to constitute, any legally binding or enforceable obligations on the part of either Department.

\_\_\_\_\_  
Director General  
Branch  
Department of \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Director General  
Branch  
Department of \_\_\_\_\_

\_\_\_\_\_  
Date



**SCHEDULE "A"**

**DESCRIPTION OF THE X SCIENTIFIC DATA**



**SCHEDULE "B"**

**DESCRIPTION OF THE Y SCIENTIFIC DATA**

## APPENDIX I

### **FEEDBACK FORM: The Dissemination of Government Geographic Data in Canada Guide to Best Practices**

The continued refinement of the Guide is a collaborative process. We rely on your input to make progressive improvements to the Guide so that it remains a valuable information asset for the public sector licensing community. Please use this form to provide feedback on any aspect of Guide, or to identify new topics of potential interest to those involved in the dissemination and licensing of public sector geographic information.

We thank you in advance for your feedback. Please forward to:

Director  
GeoConnections Program  
Natural Resources Canada  
615 Booth Street, Room 624  
Ottawa, Ontario  
K1A 0E9 CANADA

Please complete each section

*Date:*

*Name:*

*Position:*

*Organization:*

*Contact phone number:*

*Contact email address:*

Describe the Issue or Problem:

*Describe issue or problem with the current version of the Guide. Please give section and page numbers where possible.*

Recommended Change:

*Please describe any recommended changes to the Guide in order to address the Issue or Problem defined above.*