**International Hydrographic Organization**

**Data Server Agreement**

#### Version 2.0.0

THIS AGREEMENT is made this «Day» «Date» by and between the International Hydrographic Organization (hereinafter referred to as IHO), an Intergovernmental Organization headquartered in the Principality of Monaco, and «To» (hereinafter referred to as the Company), a corporation organised under the laws of «Country» and having its principal place of business at «Address\_Line1», «Address\_Line2», «Address\_Line3».

**WHEREAS**

The IHO has coordinated the development of the IHO S-63 and S-100 Data Protection Schemes and is undertaking the role of Scheme Administrator (SA) for both protection schemes.

The Company wishes to deliver an dataset service compliant with the IHO S-63 and/or S-100 Data Protection Schemes and has requested the SA to provide a data server certificate and details of other scheme participants to the Company.

The IHO acting as SA has satisfied itself that the Company’s application to join the S-63 and/or S-100 Data Protection Schemes has been endorsed by either an IHO Member State or a Regional ENC Co-ordinating centre (RENC) acting on behalf of a group of Member States.

The IHO acting as SA is willing, subject to the terms of this Agreement, to allow the Company to be a full participant in the S-63 and/or S-100 Data Protection Scheme and to provide to the Company a data server certificate and Proprietary Information to facilitate this.

The IHO has established the ENC Standards Maintenance Working Group with an S-63 discussion group, and the S-100 Working Group to provide a forum for the Company to put forward experiences with and suggestions for improvement of the IHO Data Protection Schemes.

# DEFINITIONS

In this Agreement, save where the context otherwise requires, the following terms and expressions shall have the following meanings:

IHO / Company The parties to this Agreement

Data Protection Scheme The set of tools, procedures and definitions to encrypt/decrypt and digitally sign/authenticate signatures to ENC and datasets as defined in the IHO S-63 standard or S-100 based product specifications using the Proprietary Information.

Data Server Term used to represent an organisation providing an ENC or dataset service protected by the S-63 or S-100 Data Protection Schemes.

Dataset Generic term for geographical information compliant with S-57 or any of the S-100 based product specifications protected using any of the IHO Data Protection Schemes (S-63 or S-100 part 15)

ENC Electronic Navigational Chart as defined by the ENC Product Specification in IHO S-57 Data Transfer Format.

EPS ENC or dataset Processing System. An application or set of applications developed or used by the Company to create and deliver an ENC or dataset service compliant with IHO S-63 or S-100 Data Protection Schemes.

IHO International Hydrographic Organization. The IHO is an Intergovernmental Organization headquartered in the Principality of Monaco.

M\_ID Manufacturer’s identity provided by the Scheme Administrator.

M\_KEY Manufacturer’s key provided by the Scheme Administrator. Used to create User Permit.

Proprietary Information All information defined in the IHO S-63 and S-100 Data Protection Schemes required by the Company to participate in the protection scheme. It includes the Manufacturer ID and Manufacturer Key (M\_ID and M\_KEY), SA Certificate and Public Key and Data Server Certificate information, and any other information supplied by or on behalf of the IHO, related to the operation of the Data Protection Schemes, and marked as confidential.

SA Scheme Administrator. The IHO is Scheme Administrator responsible for administrating the S-63 and S-100 Data Protection Schemes, and its operational use on behalf of the IHO.

User The person(s) who purchases and/or uses protected ENCs or datasets provided by the Company in an EPS.

User Permit Encrypted form of Hardware ID as defined in Proprietary Information and in IHO S-63/S-101 Data Protection Scheme.

# DUTIES OF THE COMPANY

The Company must:

## Ensure, by utilising the S-63 and S-100 standards, available guidance notes and Test Data Sets, that their ENC and dataset service fulfils the requirements of, and is compliant with the S-63 and S-100 Data Protection Schemes.

## Not state, or infer in any way, that the IHOhas formally approved the Company’s implementation of the IHO S-63 or S-100 Data Protection Schemes; however, the Company is able to state that they believe that their service is compatible with either or both of the IHO S-63 or S-100 Data Protection Schemes.

## Ensure the security of its Private Keys used in operating and delivering their ENC or dataset service.

## Ensure the security of the Manufacturer Key (M\_KEY) and Manufacturer Identity (M\_ID) information provided by the SA and defined in the Proprietary Information and use this information in confidence to deliver a protected ENC or dataset service.

## Make the SA Digital Certificate/Public Key and the Data Server Certificate available within the protected ENC or dataset service.

## Amend, within a reasonable period, their procedures and delivery of protected ENC or dataset services if any of the Proprietary Information is changed; however the Company is not obliged make their ENC or dataset service available to all scheme participants.

## Notify the SA immediately of any breach or suspected breach of the S-63 or S-100 Data Protection Scheme that it becomes aware of. In such cases, the Company shall immediately supply the SA with any necessary detail of the nature of the breach, when it happened, and what dataset information or Proprietary Information is involved in the breach and provide assistance to the SA to identify the cause of any breach.

## Return to the SA any Proprietary Information that is revoked from the Company by the SA and without further notice discontinue any further use of it.

## Inform the IHO of any change of the administrative and/or technical point of contact designated in the Data Server Certificate Request Form.

# DUTIES OF THE SA

3.1 The IHO acting as SA will maintain the S-63 and S-100 Data Protection Schemes using the procedures set out in the standards.

3.2 The IHO acting as SA will inform the Company of any changes in the Proprietary Information and / or to the Data Protection Schemes.

3.3 The IHO acting as SA will provide the Company with a ZIP file. This file will contain four text files named "certificate" (Data Server Certificate), "metadata", "publk" and "ssk" for use with S-63, and “S-100 Data Server Certificate” for use with S-100. The Data Server Certificate files will be generated by the IHO from the "Data Server Public Key" and the "Data Server Self-Signed Key provided by the Company in accordance with the S-63 and S-100 Data Protection Schemes.

3.4 The IHO acting as SA will frequently update the Company with the latest list of Manufacturer Keys (M\_KEY) and Manufacturer Identities (M\_ID) as they become available.

3.5 The IHO acting as SA will treat as confidential any proprietary information that is marked as such which is disclosed to the SA by the Company in accordance with this Agreement.

# WARRANTY

4.1 The IHO warrants that the IHO has taken all reasonable care in constructing and documenting the IHO S-63 and S-100 Data Protection Schemes, but does not warrant that it is fit for any purpose, whether made known to it or otherwise.

4.2 The IHO does not offer any warranty on the accuracy, completeness, and reliability of how the Company has implemented or Users are operating the Data Protection Scheme in their EPS.

# LIABILITY

5.1 Nor the IHO nor its licensors accept any liability for any loss or damages for any IHO S-63 and S-100 Data Protection Scheme implementation work undertaken by the Company or its sub-contractors, or for any operational use by Users of the ENC or dataset service protected by the S-63 and S-100 Data Protection Schemes.

5.2 The Company acknowledges that no promise, presentation or warranty has been made or given by the IHO or by any person or company on their behalf regarding the profitably of, or any other consequences or benefits to be obtained from, the disclosure, delivery or use of the Proprietary Information disclosed in accordance with this Agreement. The Company has relied on their own skills and judgement to use the Proprietary Information as a basis for the development of their ENC or dataset service.

5.3 No condition or warranty is given that the IHO S-63 or S-100 Data Protection Schemes or any part of it will be entirely error free, but the IHO hereby undertakes that it will take all reasonable steps to correct as soon as reasonably possible errors which are brought to its attention. The IHO will maintain the S-63 and S-100 Data Protection Schemes using the rules of procedure defined in the IHO Hydrographic Services and Standards Committee (HSSC).

5.4 Therefore, neither the IHO nor any other related company or person will in any circumstances be liable for any damages whatsoever, including, but not limited to, without limitation - damages for loss of business, business interruption or other direct, indirect or consequential loss, arising out of the use or inability to use the Proprietary Information. This exclusion of liability is without prejudice to laws, which cannot legally be excluded or restricted.

5.5 The provisions set out in this paragraph remain valid even if the IHO undertakes tests of the Company’s operational procedures that are designed to demonstrate the Company’s implementation of the technical requirements of the standard in provision of an ENC or dataset service protected by the S-63 or S-100 Data Protection Schemes.

# INTELLECTUAL PROPERTY RIGHTS

6.1 The IHO hereby represents and warrants that it is the sole owner of all, or has properly licensed necessary, rights, title and interest to the Proprietary Information or constructs in the IHO S-63 and S-100 Data Protection Schemes, including copyrights, trademarks and other proprietary rights.

6.2 Except for pre-existing rights and the rights to use the Data Protection Schemes in accordance with this Agreement, the Company shall have no rights in respect of the Intellectual Property relating to the IHO S-63 and S-100 Data Protection Schemes and the Proprietary Information. The Company hereby acknowledges that it shall not acquire any rights in respect thereof and that all such rights shall belong to the IHO or its licensors.

6.3 Except in the case of any pre-existing rights the Company shall not at any time claim or seek to claim or otherwise hold itself out as owning or holding any proprietary rights, including Intellectual Property Rights relating to the IHO S-63 or S-100 Data Protection Schemes, Proprietary Information and associated documentation provided by the IHO.

6.4 The IHO acting as the SA hereby confirms that there will be no charge to the Company (eg royalties or fees) for the use of the IHO S-63 and S-100 Data Protection Schemes.

# CONFIDENTIALITY

7.1 The Company undertakes to securely store the M\_KEY information supplied by the SA in accordance with this Agreement and to make all possible efforts to protect this information against disclosure to a third party. Disclosure to a third party may only be made with prior written consent from the IHO.

7.2 If the consent to disclose information mentioned in 7.1 above is granted, then disclosure shall only be made when such third parties have accepted in written form the same obligations of confidence to those contained in this Agreement and this is approved by the IHO prior to the disclosure.

7.3 The Company undertakes to ensure the dissemination of M\_KEY information within its own organisation and/or according to the above-mentioned consent of the IHO to third parties is on a strict “need to know” basis. Furthermore, the Company is obliged to ensure that all information from the IHO according to this Agreement is stored securely.

# TERMINATION

8.1 The IHO acting as SA has the right, without giving the Company any right to claim for indemnification, damages etc. to terminate this Agreement with immediate effect and withdraw the Company’s permission to use the Proprietary Information and participate in the S-63 or S-100 Data Protections giving the Company a minimum of one calendar month notice if :

8.1.1 The Company has compromised the S-63 or the S-100 Data Protection Schemes by disclosing Proprietary Information marked as confidential.

8.1.2 The SA has detected significant errors or inadequacies in the implementation of the S-63 or S-100 Data Protection Schemes within the Company’s ENC or dataset service or to the security of the Proprietary Information provided under the terms and conditions of this Agreement andif the infringements are not rectified within 60 working days or as otherwise so agreed with the SA.

8.2 The Company may terminate this Agreement at any time giving the SA a minimum of one calendar month notice.

8.3 Upon termination, except for any pre-existing rights the rights to use the Proprietary Information, and all related information, will be withdrawn.

8.4 Upon termination of this Agreement the Company undertakes to return to the SA all documents and copies of the Proprietary Information, and all other information in connection hereto which is disclosed in accordance with the terms and conditions of this Agreement. The Company also undertakes to permanently destroy all electronic records from media, discs or other devices retained after the disclosure.

# LAW AND JURISDICTION

9.1 The following is agreed:

9.1.1 The Company agrees that any legal proceedings that it institutes against the IHO acting as the SA by the Company shall be brought in the courts of Monaco and that in this event this Agreement shall be governed by and interpreted in accordance with laws of the Principality of Monaco.

9.1.2 The IHO acting as the SA agrees that any legal proceedings that it institutes against the Company shall be brought in the courts of the Company’s country of domicile and that in this event this Agreement shall be governed by and interpreted in accordance with laws of the Company’s country of domicile.

9.2 This Agreement supersedes any previous agreements between the Company and the IHO or the former International Hydrographic Bureau (IHB) in regard to a security scheme for ENCs or datasets and takes effect when signed by both parties, and is done in two equal counterparts, retained by each of the parties.

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| Signed by:  «Full Name»: | Signed by: |
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| Authorised Signatory for and on behalf of  «Name of Company» | Authorised Signatory for and on behalf of  the International Hydrographic Organization |
| Date: «Date» | Date: |