International Hydrographic Organization

**OEM 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 has or wishes to develop and market a system compliant with the IHO S-63/S-100 Data Protection Schemes to allow the processing and display of datasets protected by the Scheme and has requested the SA to provide proprietary information complementary to the IHO S-63/S-100 documentation to enable this.

The IHO acting as SA has taken note of the request made by the Company to participate in the S-63/S-100 Data Protection Schemes, in which the Company has indicated its willingness to fulfill the testing requirements.

The IHO acting as SA is willing, subject to the terms of this Agreement, to provide the Company with Proprietary Information specific to the Company to enable systems produced by the Company to process and display datasets protected by the S-63/S-100 Data Protection Schemes.

The IHO has established the ENC Standards Maintenance Working 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 S-63 or the S-100 Data Protection Schemes.

This version of the agreement allows the Company to participate in the S-63 and S-100 Data Protection Schemes.

This version of the agreement supports the operation of both the S-63 and the S-101 Data Protection Schemes. The Agreement obligations are transparent and relevant independent if the Company decides to develop support for one or both of the 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

Cell/Encrypted Key Key used to produce encrypted ENC and datasets, and required to decrypt the encrypted ENC or dataset information.

Cell/Data Permit A file containing the dataset encryption key, created specifically for a particular user.

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.

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)

Data Server Term used to represent an organisation producing encrypted ENCs and datasets, or issuing Cell/Data Permits to Users.

ECS Electronic Chart System, an electronic navigational aid utilising ENCs.

ECDIS Electronic Chart Display System, type approved navigation system utilising ENCs compliant with IMO ECDIS Performance Standards and IEC 61174.

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 process and operate on protected datasets to display the chart information.

HW\_ID Unique hardware ID known only internally to the EPS application.

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.

OEM Original Equipment Manufacturer.

Proprietary Information All information defined in the IHO S-63 and S-100 Data Protection Schemes required by the OEM to participate in the protection scheme. It includes the Manufacturer ID and Manufacturer Key (M\_ID and M\_KEY), SA Certificate and Public Key, User Permit, Hardware ID (HW\_ID), Cell/Data Permits 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.

SENC System ENC, the OEM’s chosen data format which is created from the decrypted dataset information, and which the EPS application software uses. The SENC format applies both to the internal system format used by User application, or used by the Data Server service delivery system.

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

User The person(s) who purchases protected ENC or datasets and/or operates the EPS; this excludes personnel employed or hired by the Company to service the 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

General Requirements:

## Ensure, by utilising the IHO S-63 and S-100 standards, available guidance notes and Test Data Sets, that their EPS fulfils the requirements of, and is compliant with the S-63 and S-100 Data Protection Schemes and the technical requirements of this Agreement.

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

## 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.

Technical requirements:

The Company must:

## Protect the data contained within the SENC so that it is:

Copy and write protected within the EPS (i.e. the SENC becomes useless if copied from one EPS to any other EPS, or if the SENC is amended)

and/or

Stored in a way that makes it very hard for a user to determine its contents.

## Not provide any information to Users, whether as part of the EPS, system documentation, or otherwise, concerning where the temporary unprotected dataset file is located within the EPS.

## Not provide to Users a SENC to Dataset conversion programme that exports datasets originally secured using any of the IHO data protection schemes, either in written form or incorporated into the system, or in any way suggest to Users how such a programme could be constructed.

## Provide a secure form of unique identification for each unit of the EPS manufactured. This “Hardware ID”, as defined in the IHO protection schemes, must not be produced using sequential numbers. The “Hardware ID” must be stored within the EPS in a secure way.

## Keep a register of all Hardware IDs and User Permits (as defined in IHO protection schemes) created, and if requested by the SA supply a copy of the register to the SA within 15 working days.

## Not provide any information to Users, whether as part of the EPS, system documentation, or otherwise, concerning the disclosure or manipulation of the “Hardware ID” information.

## Produce a User Permit (as defined in IHO protection schemes) for each applicable EPS manufactured, and ensure this User Permit is freely available to the User.

The Company must furthermore ensure that all of their EPS incorporating the IHO protection schemes performs the following tasks and meets the following requirements when decrypting datasets protected by the scheme:

## Authenticate the SA Digital Certificate prior to loading of the protected dataset information, and prominently display an appropriate message to inform the User if the SA Digital Certificate is invalid.

## Allow the User to view the SA Digital Certificate / Public Key (as defined in IHO protection schemes), and to enter a new official Digital Certificate/Public Key issued by the SA.

## Authenticate the Data Server Certificate contained in the Digital Signature file using the SA Digital Certificate/Public Key information. Authentication must be completed for all dataset information prior to loading and processing of encrypted datasets. EPS must prominently display an appropriate message to inform the User if the Data Server Certificate is not correctly authenticated.

## Following authentication of the Data Server Certificate, extract the Data Server Public Key from the certificate and use it to verify the signatures of the dataset files. Verification must be completed prior to loading and processing the encrypted datasets. EPS must prominently display an appropriate message to inform the User if a dataset digital signature is found to be invalid.

## Decrypt the dataset file using the appropriate Cell Key. For S-63 Data Protection, validate the ENC Checksum after decryption and before conversion into SENC format. EPS must prominently display an appropriate message to inform the User if the ENC checksum is not correct.

## Only hold decrypted dataset information temporarily before conversion to SENC. Dataset information must only be stored in its encrypted state, or as a SENC. It must not be stored in a decrypted state.

## Delete the decrypted dataset information immediately upon successful conversion to SENC. If the SENC conversion fails, the system must delete the decrypted dataset information immediately and further processing must be on the encrypted dataset files. EPS must prominently display an appropriate message to inform the User about the problem.

## Do not provide within the EPS a facility to copy the temporary unprotected dataset files that exist after decryption and before conversion to SENC.

## Store Cell Permits and Permits as defined in the Proprietary Information in the same format they were received.

## Conduct the system date and subscription status checks as detailed in the protection schemes documentation, and provide prominent warnings also detailed in the standards when appropriate.

## EPS must provide support of all error messages or equivalent detailed in the protection scheme documentation.

## The Company must inform the IHO of any change of the administrative and/or technical point of contact designated in the M\_ID and M\_KEY 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 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 EPS incorporating the S-63 and S-100 Data Protection Scheme.

5.2 The Company acknowledges that no promise, presentation or warranty has been made or given by the IHO, its licensors 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 their own development of an EPS compliant with the Data Protection Schemes.

5.3 The provisions set out in Clause 5.2 remain valid even if the SA has undertaken tests of the Company’s EPS to verify the Company’s implementation of the technical requirements of the Data Protection Schemes and this Agreement.

5.4 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).

5.5 Therefore, neither the IHO nor its licensors or 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.

# INTELLECTUAL PROPERTY RIGHTS

6.1 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 the rights to use the S-63 and/or S-100 Data Protection Schemes in accordance with this Agreement, the Company shall have no rights in respect of the Intellectual Property relating to the 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 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 and 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 (e.g. 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 provided 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 SA.

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.

# 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 Protection Schemes 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 EPS related to the technical requirements set out in this Agreement 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 for new EPS units and within one year for existing EPS units of the notification of the infringement 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: |