

**CANADIAN HYDROGRAPHIC SERVICE  
DIGITAL VALUE-ADDED RESELLER AGREEMENT**

This is Canadian Hydrographic Service Digital Value-Added Reseller Agreement no. \_\_\_\_\_, made in duplicate, effective as of the date provided in clause 9.1 below.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, as represented by the Minister of the Department of Fisheries and Oceans, and acting through the Canadian Hydrographic Service, 615 Booth Street, Ottawa, Ontario K1A 0E6  
("the Crown")

AND:

\_\_\_\_\_

a corporation incorporated under the laws of \_\_\_\_\_

with head office located at: \_\_\_\_\_

and its successors

(the "Licensee")

**WHEREAS** the Crown produces nautical charts and other nautical publications for Canadian territorial waters, referred to herein as CHS Digital Data and Products, and whereas the Crown is the owner, or licensee, of the intellectual property rights in and to the CHS Digital Data and Products;

**AND WHEREAS** the Licensee is interested in reproducing CHS Digital Data and Products in whole or in part, for the purposes of developing digital products or integrating them into the Licensee's existing digital products, all referred to herein as "VAR Products and VAR Product Updates", and distributing VAR Products and VAR Product Updates to End Users, as the term is defined herein, in accordance with the terms and conditions contained herein;

**AND WHEREAS** the Crown wishes to grant to the Licensee certain rights to reproduce CHS Digital Data and Products, to develop VAR Products and VAR Product Updates from them, or to integrate them into the Licensee's existing VAR Products or VAR Product Updates, and distribute VAR Products and VAR Product Updates to End Users, in accordance with the terms and conditions contained herein;

**AND WHEREAS** the Parties hereto are desirous of entering into a licence agreement on the basis herein set forth;



**NOW THEREFORE**, the parties agree as follows:

## **1.0 DEFINITIONS**

“Agreement” means this CHS Digital Value-Added Reseller Agreement, its recitals and all schedules annexed to this Agreement as the same may be amended from time to time in accordance with the provisions hereof.

“CHS” means the Canadian Hydrographic Service.

“CHS Digital Data and Products” means the digital data and products produced by or for CHS, provided by the Crown to the Licensee for the purposes of developing and distributing VAR Products and VAR Product Updates, for distribution to end users, in accordance with the terms and conditions of this Agreement. The CHS Digital Data and Products available for licence at any given time are listed at [www.charts.gc.ca](http://www.charts.gc.ca). The CHS Digital Data and Products which the Licensee has requested are set out in Schedule "D" attached hereto. The CHS Digital Data and Products which the Licensee has licensed are set out in Schedule "E" attached hereto. CHS may in its sole discretion cancel or replace any CHS Digital Data or Product, as provided out in clause 5.2 below. "CHS Digital Data and Products" includes related documentation provided by CHS to the Licensee pursuant to the terms and conditions of this Agreement.

“CHS Digital Data and Products Updates” mean updates to CHS Digital Data and Products which may consist of a new chart, a new edition of a chart, or a new electronic file, in CHS's sole discretion, within the geographic area of licensed CHS Digital Data and Products. Such CHS Digital Data and Products Updates will be available on a CHS server for downloading by the Licensee without charge. However, if the Licensee wishes to licence additional CHS Digital Data and Products, or new charts produced by CHS outside the geographic area of licensed CHS Digital Data and Products, the Licensee can request an amendment to this Agreement which will be attached in Schedule "F" hereto.

“Content Ratio” means the number of CHS paper chart titles in the VAR Product divided by the total number of official government chart titles in the VAR Product; or in the case of non-chart Products, the percentage of CHS content.

“Crown’s Licensed Intellectual Property” means those rights conferred upon the Crown by third parties over the use of Data contained in the CHS Digital Data and Products, the Intellectual Property Rights of which do not vest with the Crown.

“Data” means any expressed data, fixed in a form giving rise to Intellectual Property Rights;

“End User(s)” means any individual, corporation or organization to whom the Licensee distributes and grants a sublicense for use of the Licensee’s VAR Products and/or VAR Product Updates.

“Estimated Price” means the price in Canadian funds estimated by the Licensee for any wholesale or retail sale by the Licensee of VAR Products and VAR Product Updates, as set out in the signed Application Form and Order Form in Schedule “D” below.



“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.

“Party” means the Crown, or the Licensee, including their respective servants, agents, and employees.

“Royalties” means the amount to be paid to the Crown by the Licensee for access to CHS Digital Data and Products (“Access Royalties”), and for each sale of VAR Products and VAR Product Updates (“Sales Royalties”), calculated in accordance with Schedule “A” hereto.

“VAR End User Licence Agreement” (“VAR EULA”) means the VAR's End User Licence Agreement, a copy of which is attached to this Agreement as Schedule “C” hereto.

“VAR Products and VAR Product Updates” means any material, 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 hereunder. Such VAR Products and VAR Product Updates are required to contain significant value-added data content, as reasonably determined by CHS. Such VAR Products and VAR Product Updates may be developed or manufactured by constructing, deriving, developing, adapting, incorporating or by any other means using the CHS Digital Data and Products and/or the CHS Digital Data and Product Updates, in whole or any part thereof.

“Value-Added Reseller” (“VAR”) means the Licensee. The VAR has the right to use the CHS Digital Data and Products and/or the CHS Digital Data and Product Updates to develop new products. The VAR has no right to grant sublicences to anyone else to use the CHS Digital Data and Products or the CHS Digital Data and Product Updates to develop new products.

## **2.0 GRANT OF LICENCE**

2.1 Subject to the terms and conditions of this Agreement, the Crown hereby grants to the Licensee a non-exclusive, non-transferable, non-assignable right and licence to exercise all of the Crown’s Intellectual Property Rights and the Crown’s Licensed Intellectual Property Rights, in the CHS Digital Data and Products, for the purposes of:

(a) reproducing, translating, modifying and using in any way the CHS Digital Data and Products and/or the CHS Digital Data and Product Updates in order to make, or cause to be made, VAR Products and VAR Product Updates or integrate it into existing VAR Products and VAR Product Updates;

(b) reproducing and licensing to End Users such of the CHS Digital Data and Products and CHS Digital Data and Product Updates as is incorporated in the VAR Products and/or VAR Product Updates, provided such licences shall be



evidenced in writing and shall be consistent with the terms and conditions contained herein, including clauses 3.1, 3.2, 3.3, 3.4, 3.8, 11.0, 13.0 and 14.0.

The Licensee shall not distribute official Canadian Hydrographic Service ENC's in SENC format. SENC distribution from official CHS ENC's is an authorized CHS digital dealer activity, for which a CHS Digital Dealer licence agreement is required.

2.2 The Licensee shall have the right to use the CHS Digital Data and Products and CHS Digital Data and Product Updates for demonstration, marketing and such other purposes directly connected with this Agreement.

2.3 The Licensee shall not modify, amend, add to or in any way alter any CHS Digital Data and Products or CHS Digital Data and Product Updates supplied to it under this Agreement, except as expressly authorised under this Agreement or with CHS' prior written consent.

2.4 The Licensee shall not issue a sublicense to a dealer or value-added reseller.

2.5 It is acknowledged and agreed by the Parties that CHS may, at its discretion and on any terms and conditions that CHS may choose, provide the CHS Digital Data and Products directly to any Canadian federal or provincial government department and/or agency, to any Canadian university or other educational institution, to any not-for-profit organization, or to any hydrographic office.

2.6 This licence is valid only for the VAR Products and VAR Product Updates at the Licensee's Estimated Price set out in the signed CHS Application Form and Order Form attached as Schedule "D" to this Agreement.

### **3.0 INTELLECTUAL PROPERTY**

3.1 The Crown's Intellectual Property Rights in and to the CHS Digital Data and Products and/or the CHS Digital Data and Product Updates shall at all times remain the property of the Crown. The Licensee shall not during or at any time after the expiry or termination of this Agreement in any way question or dispute the ownership by the Crown of its Intellectual Property Rights in and to the CHS Digital Data and Products and/or the CHS Digital Data and Product Updates.

3.2 All title and Intellectual Property Rights in and to CHS's crest and logo, domain names, and other marks shall at all times remain the property of the Crown. The Licensee shall not during or at any time after the expiry or termination of this Agreement in any way question or dispute the ownership thereof by the Crown. The Licensee shall not during or after the expiry or termination of this Agreement, without the prior written consent of CHS, use or adopt any trade mark, trade name, trading style, commercial designation or domain name that includes or is similar to or may be mistaken for the whole or any part of any trade mark, official mark or domain name used by CHS.

3.3 Subject to clause 3.1 and 3.2 above, and without affecting the Crown's Intellectual Property Rights in the CHS Digital Data and Products, and the CHS Digital Data and



Product Updates, and any third party's Intellectual Property Rights in Data contained in the CHS Digital Data and Products and/or the CHS Digital Data and Product Updates, all title and Intellectual Property Rights in and to VAR Products or VAR Product Updates shall vest in the Licensee or in such person as the Licensee shall decide.

3.4 All title and Intellectual Property Rights in and to the Crown's Licensed Intellectual Property are the property of their respective owners and may be protected by copyright, other intellectual property laws, common law or international treaties.

3.5 The Licensee shall promptly notify CHS of any infringement by others of the Crown's Intellectual Property Rights in CHS Digital Data and/or the CHS Digital Data and Product Updates, or CHS's crest or logo, other marks or domain or social media account names, when such becomes known to the Licensee and where possible provide a sample of such infringement to CHS, and co-operate with CHS in enforcing the Crown's Intellectual Property Rights in the same.

3.6 CHS shall determine in its sole discretion whether to take action with regard to any infringement of the Crown's Intellectual Property Rights in the CHS Digital Data and/or the CHS Digital Data and Product Updates, or CHS's crest, logos, other marks or domain or social media account names. The Licensee shall, at CHS's request, cooperate in every reasonable aspect in the preparation of such action including making available to the CHS records, information, evidence and testimony by the employees of the Licensee relevant to the infringement. In the event the Licensee is required to cooperate in such action, CHS shall reimburse the Licensee for reasonable out-of-pocket expenses incurred by the Licensee, provided the Licensee obtains CHS's approval prior to incurring such expenses. The Licensee shall not be obligated to incur expenses if they are not approved by CHS.

3.7 The Licensee shall take no action to compel the Crown to take any action with regard to such infringement, or to claim damages from the Crown for failure to do so.

3.8 It is a condition of this Agreement that the Licensee may not offer for sale or sell any data or products which infringe the Crown's Intellectual Property Rights in the CHS Digital Data and Products and/or the CHS Digital Data and Product Updates, or CHS's crest, logos, other marks or domain or social media account names; and CHS shall have the right to terminate this Agreement without notice or payment of any compensation, if CHS in its sole discretion determines that the Licensee is offering for sale or selling any infringing data or products.

#### **4.0 ROYALTIES**

4.1 In consideration of the rights and licences granted under this Agreement, the Licensee shall pay the Crown the Access Royalties and Sales Royalties based on revenue earned (not revenue received) for VAR Products and VAR Product Updates sold by the Licensee, as prescribed in Schedule "A" attached hereto, in the manner set out in said Schedule.



## **5.0 PROVISION OF CHS DIGITAL DATA AND PRODUCTS**

5.1 CHS will provide the Licensee with the CHS Digital Data and Products and CHS Digital Data and Products Updates by posting a list of CHS Digital Data and Products on the CHS website at [www.charts.gc.ca](http://www.charts.gc.ca), and making them available for electronic downloading from a CHS server. CHS assumes no liability for failure to provide Products or Updates, or notices of Products or Updates, to the Licensee.

5.2 CHS shall have the sole discretion to determine whether a particular product is considered a CHS Digital Data and Products Update or new CHS Digital Data or a new CHS Digital Data Product. CHS assumes no obligation to develop new products, and shall at no time be liable for failure to develop new products, or issue notices in relation thereto, to the Licensee.

5.3 CHS shall have the sole discretion to cancel or replace any CHS Digital Data or Products. CHS will provide the Licensee with notice, which may be in any form, of any cancellation or replacement, at which time the Licensee will be deemed to have agreed to deletion of that cancelled or replaced CHS Digital Data or Product from Schedule "E". Any cancellations or replacements will be posted on the CHS website at [www.charts.gc.ca](http://www.charts.gc.ca), and documented in Schedule "F".

5.4 The Licensee will use only the most recent editions of CHS Digital Data and Products, and will not use cancelled or replaced CHS Digital Data or Products to produce VAR Products and VAR Product Updates.

5.5 The Licensee will distribute only the most recent edition of the VAR Product to End Users, and will make available for purchase by End Users the most recent version of VAR Product Updates as soon as reasonably possible.

## **6.0 VAR PRODUCTS AND VAR PRODUCT UPDATES**

6.1 The Licensee shall within thirty days of the development and/or manufacture of any and all VAR Products and VAR Product Updates, and prior to their distribution, provide to CHS, at no cost to it, two (2) sample copies of VAR Products and VAR Product Updates in English, and two (2) sample copies of same in French, if applicable. For purposes of clarity, this clause shall not apply to individual data updates, but only to VAR Product Updates.

6.2 The Licensee shall not use any identifier, mark or name of the Crown, CHS or the Department of Fisheries and Oceans in a manner that would imply that the Licensee has an exclusive distribution arrangement for any or all of the CHS Digital Data and Products, and/or the CHS Digital Data and Product Updates, or that the Licensee has access to any confidential information or information not available to any other party.

6.3 The Licensee shall promptly notify CHS of any action or proceeding or any event that may materially and adversely affect its ability and capacity to exercise its licensed rights and fulfil its obligations under this Agreement.



## **7.0 REPORTS**

7.1 The Licensee agrees to provide CHS the sales reports prescribed in Schedule “B” attached hereto, in the manner set out in said Schedule.

## **8.0 MARKETING**

8.1 All marketing and promotional material produced by the Licensee which relates to CHS Digital Data, or any VAR Products or VAR Product Updates shall not misrepresent or bring into disrepute the reputation of the Crown or CHS.

8.2 The Licensee shall, prior to use, supply CHS for approval, such approval not to be unreasonably withheld, a copy of all marketing and promotional literature that in any way relates to CHS Digital Data and/or the CHS Digital Data and Product Updates or the relationship between CHS and the Licensee. CHS shall inform the Licensee of any required changes within five (5) days of receipt. Failure by CHS to inform the Licensee of any required changes within five (5) days of receipt shall constitute approval of such marketing and promotional literature. The Licensee shall make, at its expense, all changes reasonably required by CHS.

8.3 The Licensee shall ensure that all verbal, written or electronic marketing and promotional material clearly and correctly indicates the year and edition, if applicable, of the CHS Digital Data and/or the CHS Digital Data and Product Updates and shall not make any direct or indirect claims or representations that they relate to any other year or edition.

## **9.0 TERM**

9.1 This Agreement is effective as of \_\_\_\_\_ when signed by both parties, and shall remain in effect for three (3) years from the date of signing, subject to clause 10.0 below.

## **10.0 TERMINATION**

10.1 Notwithstanding clause 9.1 above, this Agreement may be terminated prior to its expiration:

(a) if the Licensee commits or permits a breach of any of its material covenants or material obligations under this Agreement, and fails to cure such breach within thirty (30) days of receiving written notice thereof;

(b) upon written notice of termination without cause by either party at any time, and such termination shall take effect ninety (90) days after the receipt by the other party of such notice; or

(c) upon mutual written agreement of the Parties.

10.2 Upon the expiration or termination of this Agreement, for whatever reason:



(a) the Licensee's rights under clause 2.0 shall immediately cease, and the Licensee:

(i) shall deliver to CHS any royalties and interest payable at the time of expiration or termination;

(ii) shall deliver to CHS the relevant sales reports as set out in clause 7.0 and Schedule "B" attached hereto;

(iii) shall deliver a detailed statement to CHS of the inventory of VAR Products and VAR Product Updates then existing and not sold by the Licensee as of the date of expiration or termination;

(iv) may continue to use the CHS Digital Data and Products and/or the CHS Digital Data and Product Updates for the purpose of completing orders for VAR Products and/or VAR Product Updates which were received before the termination or expiration date of this Agreement, notwithstanding this clause 10.2(a), provided that the Licensee shall:

(A) continue to pay royalties as required by clause 4 and Schedule "A" for any VAR Product and/or VAR Product Update distributed to End Users after expiration or termination of this Agreement;

(B) continue to comply with the requirements to protect and acknowledge the source in clause 11.0; and

(C) continue to fulfil its reporting obligations set out in clause 7.0 and Schedule "B" attached hereto.

(v) shall maintain records using Generally Accepted Accounting Principles providing data that would allow CHS to calculate and easily audit any payment under this Agreement for two years after termination or expiration of this Agreement, unless CHS has agreed otherwise in writing;

(vi) shall return or destroy, at its expense, as CHS shall instruct, no later than thirty (30) days thereafter, all Crown intellectual property, other reproduced material, documentation, technical information and any other data supplied to the Licensee during the continuance of this Agreement and all and any copies made of the whole or any part of the same, except for one archival copy that shall be maintained by Licensee's counsel and used for legal purposes only; and the Licensee shall furnish CHS with a certificate certifying that the same has been done; and

(vii) shall deliver any additional written report setting out all information as reasonably required by CHS; and

(b) the following provisions survive expiration or termination of this Agreement:

- (i) clause 4 (Royalties)
- (ii) clause 7 (Reports)
- (iii) clause 10 (Termination)
- (iv) clause 11 (Protection and Acknowledgement of Source)
- (v) clause 18 (Confidentiality)
- (vi) clause 25 (Records and Audits)
- (vii) clause 26 (Representations, Warranties and Indemnities).

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

## **11.0 PROTECTION AND ACKNOWLEDGEMENT OF SOURCE**

11.1 Where any of the CHS Digital Data is contained within VAR Products or VAR Product Updates, the Licensee shall include in a prominent location on or in the product literature included with said VAR Products or VAR Product Updates the following notice:

This product has been produced by [the Licensee] based on Canadian Hydrographic Service (“CHS”) data, following any minimum standards/guidelines that may have been established by CHS, pursuant to CHS Digital Value-Added Reseller Agreement No. \_\_\_\_\_.

The incorporation of data sourced from CHS in this product shall not be construed as constituting an endorsement by CHS of this product.

This product does not meet the requirements of the Charts and Nautical Publications Regulations under the *Canada Shipping Act*. Charts and publications issued by or on the authority of CHS, must be used to meet the requirements of those regulations.

or any other notice approved in writing by CHS.

11.2 The Licensee shall ensure that no acknowledgement of the Crown except as set out in clause 11.1 above shall be shown in association with any form of promotion or advertisement, and the Licensee shall not include in its promotional materials:

(a) the names of the Crown, the Department of Fisheries and Oceans or the Canadian Hydrographic Service, or their crest, logos, flags, other insignia or domain names;

(b) the chart name used in the original CHS Digital Data and Products, and/or the CHS Digital Data and Product Updates; or



(c) any annotation of any kind that may in any way be interpreted as an endorsement by the Crown of the Licensee's VAR Products or VAR Product Updates.

## **12.0 BAR SCALES AND CAUTION NOTES**

12.1 The Licensee may reproduce bar scales and caution notes as they deem appropriate. With respect to charts that are not on NAD 83 (WGS 84), the Licensee shall effect appropriate datum adjustments on its products. The Licensee shall indemnify CHS for any liability which may arise from the Licensee's errors with regard to geographic adjustments.

## **13.0 END USER LICENSING AND SUPPORT**

13.1 The Licensee shall, prior to use, provide CHS with a copy of the Licensee's End User Licence Agreement for approval. CHS shall have thirty (30) days to review and approve the Licensee's End User Licence Agreement, such approval not to be unreasonably withheld, provided the Licensee's End User Licence Agreement is consistent with this Agreement. The Licensee agrees not to use the Licensee's End User Licence Agreement prior to receiving approval from CHS.

13.2 The Licensee shall ensure that each End User is bound by the terms and conditions of the Licensee's End User Licence Agreement, as approved by CHS, prior to use of the Licensee's VAR Products and VAR Product Updates. The End User Licence Agreement shall be attached as Schedule "C" hereto.

13.3 The Licensee shall provide all End User support, including provision of VAR Product Updates.

13.4 End Users do not have the right to redistribute, nor to grant sublicences, nor to use any of the VAR Products or VAR Product Updates or CHS Digital Data and Products and/or the CHS Digital Data and Product Updates to develop new products.

## **14.0 ENCRYPTION**

14.1 The Crown reserves the right to require the Licensee to encrypt the VAR Products and VAR Product Updates in order to prevent copyright infringement with regard to the CHS Digital Data and Products. In the event the Licensee encrypts the VAR Products and VAR Product Updates, the Licensee shall provide CHS with a copy of any specialized hardware and software required for CHS to decrypt the CHS data, in order to verify compliance with this Agreement.



## **GENERAL**

### **15.0 Applicable Law**

15.1 This Agreement shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws of the province of Ontario and of Canada.

### **16.0 Assignment**

16.1 This Agreement or any part thereof, shall not be assigned without the prior written consent of CHS.

16.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and permitted assigns.

### **17.0 Benefits Arising from Agreement**

17.1 No member of the House of Commons shall be admitted to share any benefits that may arise from the present Agreement.

17.2 No former public-office holder who is not in compliance with the post-employment provisions of the *Conflict of Interest and Post-Employment Code* for the Public Service may derive a direct benefit from the present Agreement.

17.3 Subject to current and future policies of the Government of Canada no company or organisation based in a country subject to any international sanction governed by the *United Nations Act*, R.S. 1985 c. U-2 shall be admitted to share any benefit that may arise from the present Agreement.

### **18.0 Confidentiality**

18.1 CHS has imparted and may from time to time impart to the Licensee certain confidential information relating to the CHS Digital Data and Products and/or the CHS Digital Data and Product Updates or other products or marketing or support thereof, and the Licensee may otherwise obtain confidential information concerning the affairs of CHS.

18.2 The Licensee agrees that it will use such confidential information solely for the purposes of this Agreement and that it shall not disclose, whether directly or indirectly, to any third party such information other than as required to carry out the purposes of this Agreement. In the event of and prior to such disclosure, the Licensee will obtain from such third parties duly binding agreements to maintain in confidence the information to be disclosed to the same extent at least as the Licensee is so bound under this Agreement.

18.3 Subject to clause 18.4 below, any information provided by one Party to another shall be treated as confidential if clearly marked as confidential. Each Party (the "First



Party”) agrees not to disclose any confidential information of the other Party (the “Other Party”) unless:

- (a) the Other Party consents in writing to the disclosure;
- (b) the information is or becomes public without breach of the Agreement by the First Party;
- (c) the information was known to the First Party prior to the date it was provided by the Other Party;
- (d) the information is provided to the First Party by a third party who does not owe a duty of confidentiality to the Other Party; or
- (e) the First Party has a legal obligation to disclose the information.

18.4 The Licensee acknowledges that the Crown is subject to the *Access to Information Act*, R.S. 1985, c. A-1, and the *Privacy Act*, R.S. 1985, c.P-21, as amended from time to time, and that this Agreement is subject to the Crown's obligations under those statutes.

## **19.0 Dispute Resolution**

19.1 If a dispute arises between the parties concerning this Agreement, the parties shall attempt to resolve the matter by negotiation, mediation or arbitration in accordance with the *Commercial Arbitration Act* c-34.6, 1985, c.17 (2nd Supp.).

## **20.0 Due Diligence**

20.1 The Licensee shall use due care, skill and diligence in the exercise of its rights under this Agreement and shall take all reasonable precautions and actions to ensure that neither the CHS Digital Data and/or the CHS Digital Data and Product Updates nor any portion thereof are used, reproduced, distributed or otherwise made available except in accordance with the terms of this Agreement.

20.2 The Licensee shall diligently monitor and enforce any and all agreements it enters into in the exercise of its rights hereunder.

## **21.0 Entirety of Agreement**

21.1 This Agreement including the recitals and Schedules “A”, “B”, “C”, “D”, “E” and “F” attached hereto and incorporated herein constitute the entire agreement between the parties with respect to its subject matter and supersedes any prior agreements or communications 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.



## 22.0 Language of Agreement

22.1 The Agreement is written in English at the request of the Licensee; cette entente a été rédigée en anglais à la demande du Licencié.

## 23.0 Licensee Not an Agent, Partner or Representative

23.1 It is agreed and understood that for the purposes of this Agreement the Licensee is not the agent, partner or representative of the Crown; will not represent itself as such; and has no authority or power to bind or contract in the name of or to create any liability against the Crown in any way or for any purpose.

23.2 The Licensee shall not incur any liability on behalf of the Crown or in any way pledge or purport to pledge the Crown's credit or purport to make any contract binding upon the Crown.

23.3 The Licensee will, in all correspondence and other dealings relating directly or indirectly to the licensing or other transaction relating to the CHS Digital Products and Data and/or the CHS Digital Data and Product Updates, clearly indicate that it is acting as Licensee and not as author or owner of the CHS Digital Products and Data and/or the CHS Digital Data and Product Updates.

## 24.0 Notices

24.1 Any notices or other communications under this Agreement shall be in writing and shall be addressed:

In the case of the Crown or CHS to:

Canadian Hydrographic Service  
615 Booth St.  
Ottawa, ON K1A 0E6  
Attn: Intellectual Property and Licensing  
Fax: 613-947-4369

And in the case of the Licensee, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Fax: \_\_\_\_\_

24.2 Any such notice or communication:

a) if delivered personally or by courier, is deemed to have been given when actually received, and



b) if transmitted by fax, is deemed to have been given on the Business Day after the date of transmission.

For the purposes of this subsection, "Business Day" means every day except Saturdays, Sundays and statutory holidays in the Province of Ontario.

## **25.0 Records and Audits**

25.1 The Licensee shall keep true and accurate books and records, using Generally Accepted Accounting Principles, and maintain such books and records during the term of this Agreement and for a period of two (2) years following the expiration or termination of this Agreement. Such books and records shall provide sufficiently detailed information to allow the Crown and/or its authorized auditors to calculate and easily audit any payment required to be made to the Crown under this Agreement and ascertain fulfilment of all other obligations of the Licensee under this Agreement.

25.2 The Licensee shall upon ten (10) days' prior written notice provide access to the Crown and/or its authorized auditors, at the Crown's expense, to the Licensee's premises, during reasonable working hours, to make periodic audits of its books and records, relevant to the determination of fees and/or royalties payable to the Crown under this Agreement and otherwise pertaining to the Licensee's obligations under this Agreement.

25.3 The Licensee shall allow the Crown and/or its authorized auditors, at the Crown's expense, to make and keep any necessary copies of the records, as the Crown and/or its authorized auditors reasonably deem necessary, and permit access to relevant employees.

25.4 In the event the fees and/or royalties that should have been paid to the Crown during any quarterly period exceed by 5% or more those that have been paid to the Crown, the Licensee shall pay forthwith to the Crown both the amount of the discrepancy plus interest at the rate of interest set out in *Interest and Administrative Charges Regulations* SOR/96-188, as amended from time to time, for the period owing, plus the cost of the audit.

25.5 The provisions of this clause 25 shall continue in full force and effect for a period of two (2) years following expiration or termination of this Agreement.

## **26.0 Representations, Warranties and Indemnities**

26.1 The Licensee understands and agrees that the Royalties in this Agreement have been determined based on the Crown exclusion or limitations of liability as set out in this Agreement.

26.2 The Licensee shall have no recourse against the Crown, 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 CHS Digital Data and Products and/or CHS Digital Data and Product Updates, or arising out of the exercise of its rights hereunder, except that Crown does not limit or exclude its liability upon a court's finding of liability attaching to the Crown for death or personal injury

caused by the negligence of its employees, agents or contractors, provided the death or personal injury occurred as a direct result of the navigational use of the licensed CHS Digital Data and Products.

26.3 Except as described in clause 26.2 above, the Crown's total liability to the Licensee, whether directly to it or by reason of indemnity or contribution in respect of the Licensee's liability to any third party, or any acts or omissions of the Crown's employees, agents or contractors, shall be limited to the sum of all Royalties due to the Crown, in accordance with clause 4.1 above and Schedule "A", during the term of this Agreement. This limit of liability shall apply separately to each and every claim against the Crown provided that where any act or omission or series of two or more acts or omissions give rise to more than one claim, the limits shall apply to the aggregate of all claims as though they were a single claim.

26.4 Notwithstanding anything else contained in this Agreement, the Crown shall not be liable to the Licensee for:

- a) the Licensee's loss of profits, revenues or goodwill or loss of anticipated savings or gains;
- b) any indirect or consequential loss even if the loss or damages were reasonably foreseeable or the Crown had been advised by the Licensee of the possibility of it being incurred and whether arising from negligence, breach of contract or of statutory duty or otherwise; or
- c) any claim which has not been notified to the Crown within sixty (60) days of the date on which the Licensee knew, or should have reasonably known of the existence of grounds for such claim.

26.5 Neither the Crown, nor its Ministers, officers, employees, or agents make any representation or warranty of any kind with respect to the accuracy, usefulness, novelty, validity, scope, completeness or currency of the CHS Digital Products and Data and/or CHS Digital Data and Product Updates and they expressly disclaim any implied warranty of merchantability or fitness for a particular purpose of the CHS Digital Products and Data and/or CHS Digital Data and Product Updates.

26.6 The Licensee represents and warrants:

- (a) that it has the capacity and resources to exercise the rights herein granted to it and to fulfil its obligations under this Agreement;
- (b) that there are no legal impediments to the carrying out of the Licensee's rights and obligations under this Agreement; and
- (c) it is a duly incorporated, validly subsisting corporation in good standing under the laws of the applicable jurisdiction listed above.

26.7 Notwithstanding anything else contained in this Agreement, CHS shall not be under any liability to the Licensee or to any other party in any way whatsoever for destruction, damage, delay or any other matters of any nature whatsoever arising out of power outages, computer failure, war, rebellion, civil commotion, strikes, lock-outs, industrial disputes, fire, explosion, earthquake, acts of God, flood, drought, bad weather, or the unavailability of servers, deliveries in whatever form, supplies, CHS Digital Products and Data and/or CHS Digital Data and Product Updates, disks or other media; or the requisitioning or other act or order by any government department, council or other constituted body.

26.8 The Licensee shall indemnify and save harmless the Crown from and against and be responsible for all claims, demands, losses, costs, including solicitor and client costs, damages, actions, suits, or proceedings, by whomsoever made, brought, and prosecuted, in any manner to the extent arising out of any tortious errors, omissions, or conduct of the Licensee, or its employees or agents, relating to the production, distribution, shipment, offering for sale, or sale of inaccurate VAR Products or VAR Product Updates, or arising from the performance or non-performance by the Licensee of its rights and obligations under this Agreement, except that the Licensee shall not be required to indemnify or save harmless the Crown upon a court's finding of liability attaching to the Crown for death or personal injury caused by the negligence of its employees, agents or contractors, provided the death or personal injury occurred as a direct result of the navigational use of the licensed CHS Digital Data and Products.

## **27.0 Security Procedures**

27.1 The Licensee shall ensure that adequate security procedures are in place within the Licensee's premises to protect the Crown's rights and interests in the CHS Digital Products and Data and/or CHS Digital Data and Product Updates and these measures shall not be less than those used to protect the Licensee's own valuable commercial property or information.

## **28.0 Waiver**

28.1 Failure or neglect by the Crown to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of the Crown's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement, nor prejudice the Crown's rights to take subsequent action.

## **29.0 Safety and Quality Control Issues**

29.1 The Licensee agrees that it will:

(a) notify the Crown immediately of any safety or quality control ("QC") issue(s) pertaining to VAR Products and VAR Product Updates with regard to Canadian content which is/are raised by a customer, dealer or distributor of the Licensee;

(b) provide a substantive written response to such third party safety/QC issue(s) within thirty (30) days of receiving notice of same, with a copy to CHS; and

(c) provide a substantive written response to any safety or QC issues pertaining to VAR products and VAR Product Updates with regard to Canadian content, which is/are raised by CHS within thirty (30) days of receiving notice of same.

29.2 In the event that CHS is not satisfied with the response provide by the Licensee to a third party or to CHS on a safety/QC issue, the Licensee and CHS agree to meet in Ottawa or as otherwise agreed to resolve the issue within sixty (60) days of receiving the original complaint.

### **30.0 Order of Precedence**

30.1 If there is a conflict or ambiguity between this Agreement proper and any schedules thereto, this Agreement proper shall prevail. If there is a conflict or ambiguity between Schedule “D” and Schedule “E”, then Schedule “E” shall prevail. If there is a conflict or ambiguity between Schedule “E” and Schedule “F”, then Schedule “F” shall prevail.



**31.0 Severance**

31.1 If any provision of this Agreement is found by a court or arbitral panel to be wholly or partly invalid, illegal or unenforceable in any respect, the remainder of this Agreement shall remain valid and enforceable and this Agreement shall be construed as if that provision had never existed.

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, as represented by the Minister of the Department of Fisheries and Oceans, and acting through the Canadian Hydrographic Service

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

\_\_\_\_\_

(printed name)

Dominion Hydrographer & Director General  
Ocean Science and Canadian Hydrographic Service

\_\_\_\_\_

(title)

\_\_\_\_\_

(date)

**LICENSEE'S FULL NAME**

by: \_\_\_\_\_

(signature)

\_\_\_\_\_

(printed name)

\_\_\_\_\_

(title)

\_\_\_\_\_

(date)



## **SCHEDULE “A”**

### **ROYALTIES**

The Licensee shall pay the Crown the Access Royalties, and Sales Royalties set out below, plus shipping, handling and taxes where applicable.

#### **Access Royalties**

The Access Royalties payable are as follows:

- BSB RNC raster charts and S-57 ENC vector charts: an access royalty of \$50CDN per paper chart title per licence term;
- Digital Tide and Current Products and/or Data: an access royalty of \$25CDN per station per licence term for constituents, and \$50CDN per station per licence term for predictions, plus a surcharge access royalty for long term predictions (past and future) of \$25CDN per station per licence term;
- Digital Sailing Directions Data and/or Products: an access royalty of \$100CDN per volume per licence term;
- Ocean Framework Data (subset of Natural Resource Maps): an access royalty of \$25CDN per map per licence term;
- Multibeam Data and/or Products: an access royalty of \$TBD CDN per file per licence term;
- CHS Source Hydrographic/Field data: an access royalty of \$75CDN per sheet per licence term;

CHS will calculate Access Royalties as follows:

- Access Royalties will be payable once per licence term per chart/product ordered at the time of ordering, prior to delivery;
- Access Royalties will not be pro-rated.

plus any applicable shipping, handling and taxes.

CHS will issue an invoice for Access Royalties to the Licensee, prior to delivery of CHS Digital Products and Data and/or CHS Digital Product Updates. Access Royalties are due in advance of the Licensee receiving CHS Digital Data and Products.

In case of VAR Products or VAR Product Updates containing multiple CHS charts or multiple types of CHS Digital Data and Products and/or CHS Digital Data and Product Updates, the Licensee shall pay multiple access royalties as set out above.



## **Sales Royalties**

The Sales Royalties payable will be calculated as follows for each VAR Product and VAR Product Update sold by the Licensee containing CHS Digital Data and Products and/or CHS Digital Data and Product Updates:

Net Revenue for the purposes of calculating Sales Royalties means Gross Revenue minus Applicable Returns minus Channel Discounts (Discounts given by the Licensee to its own dealers on VAR Products).

Sales Royalties = Net Revenue x Content Ratio x 15%

Sales Royalties to the Crown will be calculated quarterly, at the end of the quarter, based on Net Revenue earned (not revenue received) by the Licensee during the quarter from sales of the VAR Products and VAR Product Updates. The Licensee shall provide a quarterly Sales Report to CHS in accordance with Schedule "B" below. CHS shall send the Licensee an invoice for the quarterly sales. Sales royalties are payable net 30 days following receipt of invoice.

In case of VAR Products or VAR Product Updates containing multiple CHS charts or multiple types of CHS Digital Data and Products, the Licensee shall pay multiple Access Royalties as set out above, but only a single Sales Royalty.

## **General Provisions with Regard to Royalties**

Access Royalties and Sales Royalties shall be calculated and paid in Canadian currency.

Payments shall be effected by means of a cheque payable to the Receiver General for Canada and delivered to the following address:

Canadian Hydrographic Service  
615 Booth Street  
Ottawa, ON K1A 0E6  
Attn: Intellectual Property and Licensing

Payment shall clearly indicate the CHS Digital VAR Agreement number and the term of the Agreement.

Payment may also be effected by means of wire transfer, using the following information:

The Bank of Nova Scotia  
Toronto Business Service Centre  
40 King St., West, Toronto, Ontario, Canada, M5H 1H1

BENEFICIARY NAME: DFO/MPO NCR  
Authorization No. 08622710  
Account No. 476961134019  
Transit No. 47696



Swift Code: N O S C C A T T

Name of Licensee's company, this Agreement number, and invoice date.

Royalties which are payable but have not been paid by the due date, shall accrue interest from the moment they are due at the rate set out in the *Interest and Administrative Charges Regulations, SOR/96-188*, as amended from time to time.

If at any time, the Licensee is in default on the performance of any of its payment or other obligations under this Agreement, CHS shall be entitled, for so long as such default continues, to withhold provision of any CHS Digital Data and Products and /or CHS Digital Data and Product Updates to the Licensee.

In the event of non-payment, CHS has the discretion to refuse to renew this Agreement or to terminate this Agreement and repossess any documentation, records or information relating to CHS Digital Data and Products, in accordance with clause 10. For such purposes, CHS or any one or more of its agents or authorised representatives shall be entitled at any time and without notice to enter upon any premises in which the same are or are reasonably believed by CHS, to be kept, stored or used, for the purpose of repossessing the same.



## **SCHEDULE “B”**

### **REPORTING REQUIREMENTS**

#### **Sales Reports**

Each royalty payment shall be accompanied by a Sales Report containing the following information:

- the total number of units of each VAR Product and VAR Product Update sold during the quarter;
- the Content Ratio for each unit;
- Net Revenue (Gross Revenue – Value of Applicable Returns – Value of Channel Discounts) x Content Ratio x 15%
- the total Sales Royalties payable to the Crown for the sales of VAR Products and VAR Product Updates during the quarter.

Sales reports are due within 30 days of the end of the quarter. Any sales report marked “confidential” will be kept confidential by CHS.

#### **Licensee's Financial Statements**

CHS reserves the right to require the Licensee to provide CHS with an audited statement of its revenues from the sale of VAR Products and VAR Product updates within 90 days of the Licensee's fiscal year end.

Any Licensee financial statements marked “confidential” will be kept confidential by CHS.

#### **Inspection of Books**

CHS reserves the right at its sole expense to inspect (or to appoint accounting experts to inspect) the Licensee's books to confirm the accuracy of the Licensee's Sales Reports at any time during the term of this Licence and for two years afterwards; provided, that such inspection is conducted in all respects in accordance with clause 25.



## **SCHEDULE “C”**

(Copy of Licensee's End User Licence Agreement to be attached)



## **SCHEDULE “D”**

Copy of completed and signed Canadian Hydrographic Service Application Form 506-F01 (E) and Order Form (available from CHS or [www.charts.gc.ca](http://www.charts.gc.ca)) to be attached - CONFIDENTIAL WHEN COMPLETED



## **SCHEDULE “E”**

### **DESCRIPTION OF LICENSED CHS DIGITAL DATA AND PRODUCTS**

The “CHS Digital Data and Products” licensed by the Licensee consist of:

- CHS Digital Chart Products:
  - *insert list of licensed S-57 Electronic Navigational Charts (“ENCs”)*
  - *insert list of licensed BSB Raster Navigational Charts (“RNCs”)*
- CHS Digital Tide and Current Data and/or Products:
  - *insert list of licensed Tide and Current Data and/or Products*
- CHS Digital Sailing Directions Data and/or Products:
  - *insert list of licensed Sailing Directions Data and/or Products*
- Ocean Framework Data (subsets of Natural Resource Maps):
  - *insert list of licensed Ocean Framework Data*
- Multibeam Data and/or Products:
  - *insert list of licensed Multibeam Data and/or Products*
- CHS Source Hydrographic/Field data
  - *insert list of licensed source Hydrographic/Field data*
- Other CHS Digital Data and Products as may be provided from time to time, in CHS's sole discretion
  - *insert list of other CHS Digital Data and Products*
- Updates of the foregoing, in CHS's sole discretion



**SCHEDULE “F” Amendment No. \_\_\_\_\_**

This Schedule replaces Schedule E and any previous Schedule “F”s in Canadian Hydrographic Service Digital Value-Added Reseller Agreement no. \_\_\_\_\_

In this Schedule:

1) the following CHS Digital Data and Products have been added:

- *insert list of new data and products*

2) the following CHS Digital Data and Products have been replaced:

- *insert list of old data and products which have been replaced, together with list of replacements*

3) the following CHS Digital Data and Products have been cancelled:

- *insert list of data and products which have been cancelled:*

4) the following is a complete list of licensed CHS Digital Data and Products as of the date of this Amendment to Schedule “E”:

- *insert consolidated revised list of licensed CHS Digital Data and Products:*

|



**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, as represented by the  
Minister of the Department of Fisheries and Oceans, and acting through the Canadian  
Hydrographic Service

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

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

Dominion Hydrographer & Director General  
Ocean Science and Canadian Hydrographic Service  
\_\_\_\_\_  
(title)

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

**LICENSEE'S FULL NAME**

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

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

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

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

