THE DISSEMINATION OF GOVERNMENT GEOGRAPHIC DATA IN CANADA

GUIDE TO BEST PRACTICES

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EXECUTIVE SUMMARY

Across all sectors of Canadian society, it is becoming increasingly recognized that basic geographic information serves as a direct input to informed decision-making in a wide variety of activities, including logistics, investment, public policy, citizen mobility and awareness, health research, resource management and emergency preparedness. The rapid development and widespread proliferation of distributed computing and the Internet over the last decade have only increased the demand for access to a variety of geographic data. 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 demand. Many data users point to the lack of a more integrated and consistent framework for the dissemination and licensing of government geographic data as inimical to the goal of promoting its wider use and benefit.

Recognizing the need for streamlined distribution models for the dissemination and licensing of government geographic data, the GeoConnections Policy Node has supported several initiatives aimed at advancing discussions on an integrated framework for the dissemination and licensing of government geographic data. The development of *The Dissemination of Government Geographic Data in Canada: Guide to Best Practices* (the "*Guide to Best Practices*") is one such initiative.

The *Guide to Best Practices* sets out an integrated framework for the three types of government geographic data dissemination and licensing models most commonly used in Canada - the unrestricted use model, the end-user model and the distributor model. For each of these, the *Guide to Best Practices* provides a rationale for appropriate use, explains how each model builds on common structures, demonstrates their inter-relationships and provides clear guidelines to assist licensing practitioners in selecting the most appropriate model and appurtenant licence agreement.

Recommended approaches to fundamental concepts such as intellectual property, liability, duration and termination are discussed in detail for the benefit of practitioners, and are guided by data dissemination policy directives currently in force across federal, provincial and territorial governments in Canada.

The *Guide to Best Practices* is the culmination of extensive, broad-based consultation with federal, provincial, and territorial government agencies, as well as the private and academic sectors involved in the production, use and/or licensing of government geographic data. The value of such consultation among participants has also driven the establishment of inter-departmental and inter-governmental working groups on government geographic data dissemination so as to foster continued collaboration on common approaches to data licensing, analysis of issues, and impact on data users. Collectively, these efforts are contributing to the wider use and value of government geographic data for the benefit of all.

Acknowledgements

This edition of *The Dissemination of Government Geographic Data in Canada: Guide to Best Practices* is the culmination of extensive discussion within government, the private and academic sectors, 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 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; and, as the work progressed, by supporting the development of a single integrated data dissemination and licensing framework for use by those involved in the management or licensing of government geographic data.

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 Working Group on Licensing Practices, formed under the Inter-Agency Committee on Geomatics;
- members of the Working Group Data Dissemination and Licensing, formed under the Canadian Council on Geomatics; and
- members of the GeoConnections Policy 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* so that it remains a valuable information asset for the public sector licensing community. Please use the Feedback Form provided in Appendix D to propose changes for consideration in the preparation of subsequent versions of the *Guide.*

The *Guide* is intended to be gender neutral. Any references to a particular gender is 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 involved in the production, use, and dissemination of geographic data have witnessed profound change in the nature and importance of their work. Across all sectors of Canadian society, it is becoming increasingly recognized that basic geographic information serves as a direct input to almost every aspect of 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 data produced by government. User applications are becoming more sophisticated - spanning political jurisdictions, requiring several types of data as input, and delivered over complex networks of databases.

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

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 lack of an integrated and consistent framework for the dissemination and licensing of government geographic data as inimical 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 beginning to drive potential data clients to duplicate data collection efforts or seek other providers rather than access comparable government 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 is currently engaged in a comprehensive review of government geographic data licensing activities. The main objectives of this work are to propose licensing models that meet the spatial-data needs of government and its stakeholders, and to make 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.[1]

[1] See US Committee on Licensing Geographic Data and Services, http://www7.nationalacademies.org/best/Licensing.html; see also www.opendataconsortium.org.

Within the European context, the Global Monitoring of Environment and Security (GMES) initiative aims at the establishment by 2008 of a European capacity for the provision and use of operational information for monitoring and management of the environment and for civil security. An important part of GMES lies 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.[2]

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.

One forum in which such issues have been discussed at length is the GeoConnections Program. [3]This federally funded five-year 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 on behalf of the GeoConnections Program to advance discussions of policy related issues. In recent years, the Policy Node has undertaken significant discussion pertaining to the roles of government in geographic data production and dissemination, commissioning the widely read KPMG Study on Canadian Geospatial Data Policy[4], 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.

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 dissemination and licensing framework suitable for use by government agencies involved in the production, use or dissemination of geographic data.

GeoConnections' response targets and supports the development of an integrated government data dissemination framework

[2] see www.gmes.info.
[3] see generally www.geoconnections.org.
[4] KPMG Consulting Inc., *Report on Canadain Geospatial Data Policy,* March 28, 2001, available at www.geoconnections,org.

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 government geographic data dissemination and licensing practices 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 government practitioners had to be involved, that their insight on the merits of an integrated framework for the dissemination and licensing of government geographic data and the content of such a framework be sought so as to ensure its relevancy, 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 of 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.

In order to address the need for wider discussion on an integrated framework for government geographic data dissemination and licensing, the Policy Node was asked to facilitate the start-up and early work of a community of practice on this subject. At the federal level, a Working Group on Licensing Practices has been formed under the Inter-Agency Committee on Geomatics, a group of federal departments and agencies with heavy involvement in the production, use, or dissemination of government geographic data. A similar community has been formed at the national level through the Canadian Council on Geomatics (CCOG), a provincial/territorial/federal coordinating body on government geographic data. These communities are seen as enabling a broader discussion of data dissemination and licensing practices for the benefit of all participants, and a principal input for the material presented in this *Dissemination of Government Geographic Data in Canada - Guide to Best Practices*.

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

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

The principal objective of The *Dissemination of Government Geographic Data in Canada - Guide to Best Practices* is to serve as a continually maintained core document detailing progress in the development of an integrated framework for the dissemination and licensing of government geographic data. The *Guide to Best Practices* will reflect the current understanding of that framework, issues that need to be resolved, and provide an assessment of these discussions from the perspectives of the licensing practitioner and data user. More specifically, the *Guide* is intended to:

- provide an overview of the rationale and structure of data dissemination policies and supporting data licensing agreements commonly used in Canada;

- set out an integrated framework for the various distribution models and their associated licence agreements such that each model and licence agreement builds on common structures, their inter-relationships are clear, and guidelines are provided to assist licensing practitioners in selecting the most appropriate model and licence for a given government geographic data disseminiation initiative;

- identify standard licence components that should be used to support the dissemination of government geographic data;

- present and recommend clear, concise, and commonly used clauses that can be used in licence agreements;

- provide model licence templates that are consistent with the overall integrated framework;

- facilitate discussions and comments on the utility of the integrated framework for government geographic data dissemination and licensing from the perspective of the government licensing practitioner and data user; and

- provide an authoritative bibliography of quality source information to facilitate further review and progress on the subject of government geographic data dissemination and licensing practices.

By encouraging and sustaining broad discussion on dissemination policy and licensing practices at a common table, it will be possible to consolidate within this Guide the many solid practices in use across government, for the benefit of all participants. A common approach to what is a common concern will result in best practices that are more readily identified, shared, and adopted as standard. Furthermore, the administrative and legal costs associated with discussion of licensing issues, review of and reaction to case law, and the periodic refinement of the integrated dissemination and licensing framework will also be reduced as a result of this process. The following chapters provide a synthesis of the discussions in fulfillment of these objectives.

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 the principal activity domains within geomatics include: global positioning systems (GPS); photogrammetry, radargrammetry and satellite imagery.

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 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 Economics of Geographic Data

It is estimated that geographic data and geomatics innovation is the fuel that will drive an estimated $45 to $67 billion (US) world market for geomatics based products and services by the year 2004.[5] According to a recent Statistics Canada's survey of the mapping and surveying services industry, there are over 2,000 companies in Canada that generate $1.5 billion worth of annual revenues from

[5] Hickling Arthurs Low (HAL) Corporation, *Geomatics Sector Human Resources Study,* 2001 (Report initiated by the Canadian Council of Land Surveyors, the Canadian Institute of Geomatics, and the Geomatics Industry Association of Canada).

geomatics based activities.[6] Alberta accounts for 90% of this revenue growth, primarily in the area of geophysical surveying. It also has the highest level of revenues, followed by Ontario, British Columbia and Quebec.

Source: R.J. Batterham, Geomatics In Canada to the Year 2000, Industry Canada

Some widely cited statistics, although hard to conclusively calculate and confirm, have indicated that for every $1 spent by government on providing modern high quality geo-scientific data, $4-$10 is spent by the private sector, which in turn resulted in the discovery of new resources worth $100 to $150.[7] Furthermore for every $1 invested in producing spatial information, $4 of benefit were generated within the economy. [8]

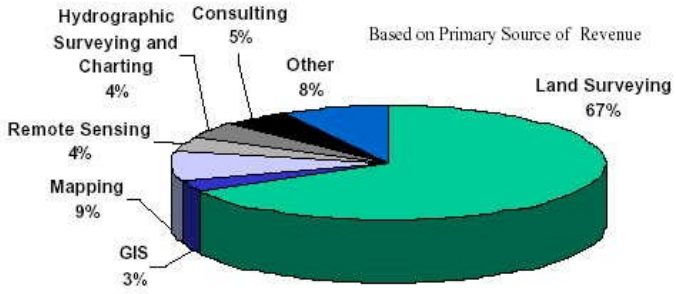
A 2001 study by Hickling Arthurs Low Corporation indicates that the dramatic advancements in computing technology in the 1990's will provide the impetus for a further cycle of expanded innovation and product / service development within the geomatics domain in the first decade of the new millenium. Much of this activity could be delivered in non-proprietary data formats and focus on services and the delivery of myriad applications facilitating decision-making. The study also concludes that geomatics technology will progressively extend to less sophisticated users, leading to further opportunities for the provision of goods and services to a broad spectrum of consumers.

[6] Statistics Canada*, 2000 Survey of Service Industries: Surveying and Mapping*, 2000, North American Idustrial Classification Systems (NAICS) codes 54136 and 54137.

[7] Comment made by AUSLIG representative referring to Australian geomatic data usage.

[8] Waterhouse, *Cost/Benefit study for the capture of Land and Geographic Data Infrastructure in Australia,* 1994.

Revenue by Field of Specialization
Mapping and Surveying Services 1998



Source: Statistic Canada, Survey and Mapping Services Survey 1998, NAICS 54136+54137 less geophysical surveying, software developers are classified elsewhere

The most recent research, trends and analyses suggest that software currently designed for use in independent mapping, GIS and image analysis will become increasingly integrated. Prices will continue to decline, leading to much wider use of geographic software and the services, as well as the spatial data they rely on. The Internet will continue to play an important role at the level of the consumer in the distribution of geomatics products and technological change will continue to blur industry boundaries.

Given the growing significance of geographic data in the Canadian and global economies, it is important for governments at all levels to ensure that the dissemination and licensing practices pertaining to the creation, use, and distribution of government geographic data support and extend the value of these data sets. Indeed, given the typically high costs of collecting core geographic data-sets such as road networks, hydrographic data, geodetic control points, etc., efforts should be made to optimize the use of such data once collected as core information assets facilitating public and private decision making.

The following chapters of the *Dissemination of Government Geographic Data in Canada - Guide to Best Practices* respond to the need for a clear and consistent approach to the development of integrated government geographic data dissemination and licensing practices. This is achieved by providing a review and assessment of current government data dissemination environment, developing a single integrated framework for government dissemination and licensing, and by providing practical tips for use by the government geographic data licensing practitioner.

CHAPTER 3

OVERVIEW OF THE CANADIAN GOVERNMENT GEOGRAPHIC DATA DISSEMINATION ENVIRONMENT

3.1 Socio-Economic Benefits of Government Geographic Data

Government geographic data is a commodity that transcends clearly delineated fields of human endeavour. Once the preserve of a selected group of individuals and institutions, it has, through innovative, cross-cutting, functional applications, surreptitiously pervaded every aspect of Canadian society; and such permeation will undoubtedly increase given the rapid development and proliferation of distributed computing and the Internet.

Government geographic data has, through its various uses, applications and transmutations, assumed a prominent role in Canadian society. It has transformed the way Canadians purchase goods and services, communicate with public and private institutions and access emergency assistance. It has modernized the conduct of government affairs by facilitating citizen consultation and participation in the development of public policy. By inviting transformative applications, it has stimulated the rapid development of innovative products, fuelled the development and advancement of a new sector of Canadian industry and increased research and development opportunities.

The dissemination of government geographic data is inseparable from the nature and functions of a representative government supportive of an innovation-driven economy.

Government geographic data dissemination is intrinsic to the functions of a modern representative government in an innovation-driven economy

As articulated in the Government of Canada's Innovation Agenda, Connecting Canadians, and Speeches from the Throne, 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.

3.2 Federal Statutory & Policy 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.

3.2.1 Federal Statutory Framework

Statutes that generally influence dissemination of government geographic data include:

- the **Access to Information Act**,
  http://laws.justice.gc.ca/en/A-1/8.html
  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 that exceptions to the release of information under the control of government institutions should be reviewed independently of government. Pursuant to the Act,

  - 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 including 'any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof';

  - 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 to 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**,
  http://laws.justice.gc.ca/en/c-42/text.html
  which stipulates that copyright to any work (term which encompasses original geographic data sets) produced:

  - 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 **Financial Administration Act**
  http://laws.justice.gc.ca/en/f-11/text.html
  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 **Official Languages Act**,
  http://laws.justice.gc.ca/en/o-3.01/text.html
  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 **User Fees Act**,
  S.C. 2004, c.6
  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 proposed 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.

3.2.2 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:

- **Communications Policy of the Government of Canada**,[9]
http://www.tbs-sct.gc.ca/pubs_pol/sipubs/comm/comm_e.asp
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;

[9] Note that as of the date of final editorial review of the *Dissemination of Government Geographic Data in Canada - Guide to Best Practices*, the Treasury Board Secretariat of the Government of Canada was preparing amendments to the Communications Policy to reflect changes in the administration of advertising as well as broader changes to the machinery in the administration of government, including the elimination of Communciations Canada.

- 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.

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,

must be provided free of charge.

Publications that do not meet those requirements may be priced.

- **Enhancing Services through the Innovative Use of Information and Technology**
  http://www.tbs-sct.gc.ca/pubs_pol/ciopubs/im-gi/im2_e.asp
  that:

  - 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.

- **Policy on Service Standards for External Fees**
  http://www.tbs-sct.gc.ca/pubs_pol/opepubs/TB_H/crp_e.asp
  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 Management of Government Information**,
  http://www.tbs-sct.gc.ca/pubs_pol/ciopubs/im-gi/siglist_e.asp
  that requires that specific measures be implemented to ensure:

  - that information under the control of the Government of Canada is managed effectively and efficiently; and

  - the quality, consistency and availability of information sharing and re-use of information.

- **Policy on the Use of Electronic Networks,**
  http://www.tbs-sct.gc.ca/pubs_pol/ciopubs/TB_CP/uen_e.asp
  that:

  - 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.

- **Retention of Royalties and Fees from the Licensing of Crown-Owned Intellectual Property,**
  http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/ContPolNotices/ip_retention_royalties_e.asp
  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**,
  http://www.cio-dpi.gc.ca/clf-upe/index_e.asp

that provides recommendations for standards and includes guidelines for implementation on departmental intranets, extranets and other electronic networks;

- the **Government of Canada Internet Guide**, http://canada.gc.ca/programs/guide/3_1_4e.html, 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**, http://www.tbs-sct.gc.ca/pubs_pol/ciopubs/TB_OIMP/GUIWP_e.asp 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.

3.2.3 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

3.3 Provincial/Territorial Statutory & Policy Frameworks on Dissemination

[TO BE COMPLETED THROUGH CONSULTATION WITH CANADIAN COUNCIL ON GEOMATICS]

3.4 Evaluation of Current Approaches to Data Dissemination

While all producers of government geographic data are required to operate within the parameters of their respective statutory and administrative dissemination frameworks, lack of central, integrated interpretative guidance has resulted in inconsistencies in the implementation of key governmental policies.

Current approaches to the dissemination of government geographic data have led to a number of unintended negative outcomes. The wide variety of terms of use, fee structures, attribution and reporting requirements has, at times, thwarted attempts to assemble and use government geographic data for applications spanning jurisdictions or requiring different geographic themes as input. Very often, the data required for such applications can be obtained only through negotiation with different government jurisdictions, or different departments within a single jurisdiction, with each one taking a different approach to the dissemination and licensing of the data in its possession. Such situations frustrate innovation and arguably run counter to overarching government policy objectives of encouraging the wider use and benefit of government geographic data.

Disparate governmental dissemination practices result in inefficiencies and dissatisfaction of data users

The results of detailed analysis and discussion on geographic data dissemination policy and the review of dissemination and licensing practices commonly used across Canada have indicated that the complexity of the current government geographic data dissemination environment in Canada stems from the lack of a coordinated approach to dissemination and licensing of such data.

In Canada, notwithstanding the myriad of licensing terms attaching to access rights to government geographic data, it is generally conceded that there are only three broad types of licence arrangements in which users and producers of government geographic data engage, namely:

- an arrangement whereby there are no or few restrictions on use and further distribution of the licensed geographic data. Such an arrangement is usually evidenced by an **unrestricted use licence agreement**.

- an arrangement whereby the government grants access rights to its geographic data, while retaining significant control over the manner in which it is used (usually prohibiting further distribution). Such arrangement is crystallized by the terms and conditions contained in an **end-user licence agreement**; or

- an arrangement specifically allowing distribution of the government geographic data, prescribing distribution requirements, reporting obligations, modifications to the licensed data and fees and royalty schemes. Such an arrangement is usually described in a **distributor agreement**.

The distribution arrangements are therefore relatively simple. What varies tremendously however, and is at the core of the frustrations expressed in relation to the dissemination of government geographic data, is the legal expression of those arrangements and the contractual terms that support the dissemination.

3.5 Towards the Future: The Development of Best Practices in Government Data Licensing

Government-wide integrated approach involving the creation of communities of practice, streamlined dissemination practices and increased use of standard licence agreements.

In order to reduce the complexity of government geographic data licensing practices, concerted effort should be expended to develop an integrated approach to the distribution of government geographic data. Such an integrated framework cannot, however, be designed haphazardly. Its development needs to be achieved through an articulation of the values and objectives for the various types of licensing arrangements in common use across government, and must reflect an appreciation of the continuum of objectives underlying government geographic data dissemination policy.

Further, it requires the creation of functional and representative communities of practice advancing discussion of issues, developing and sustaining practices that support both the policy and objective of integrated dissemination and licensing of government geographic data and the sharing of best practices. It must also include a concerted action aimed at streamlining licensing practices, with a view to improving internal efficiencies, increasing productivity and enhancing decision-making and resource management, beneficial to both users and creators of government geographic data.

An essential component of an integrated framework for the dissemination and licensing of government geographic data includes the promotion and general use of model licence agreements for the dissemination of government geographic data, consistent with the overall policy and objectives of dissemination of government holdings.

The following chapters discuss the fundamentals of government licensing and provide model clauses to be used in the context of an integrated approach to the dissemination and licensing of government geographic data.

CHAPTER 4

GOVERNMENT LICENSING : FUNDAMENTALS, AUTHORITY AND CONSTRAINTS

4.1 Generalities

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.

4.1.1 Intellectual Property

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.

4.1.2. 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.

(i) 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[10]. 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, topography, 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.

- **Copyright Protects Expression Only**

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

[10] See generally *CCH Canadian Ltd*. v. *Law Society of Upper Canada*, 2004 SCC 13.

> *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.* [11]

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.

(ii) 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.

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

[11] *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13 at para 8.

work may infringe the copyright owner's rights. Consent may be obtained via permission or a licence agreement.

4.1.3 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 Ac*t, regardless of the time and labour expended to conceive, generate or collect them[12].

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, and topographical information are not protected by copyright. Copyright will subsist however in the depiction, representation or expression of such roads, distances, boundaries and topographical information, provided they are original (i.e that emanates from the author and is not copied from another work) and are the result of skill and judgment.

4.1.4 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

[12] 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.

in which the various items are placed, there may not be sufficient originality 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.

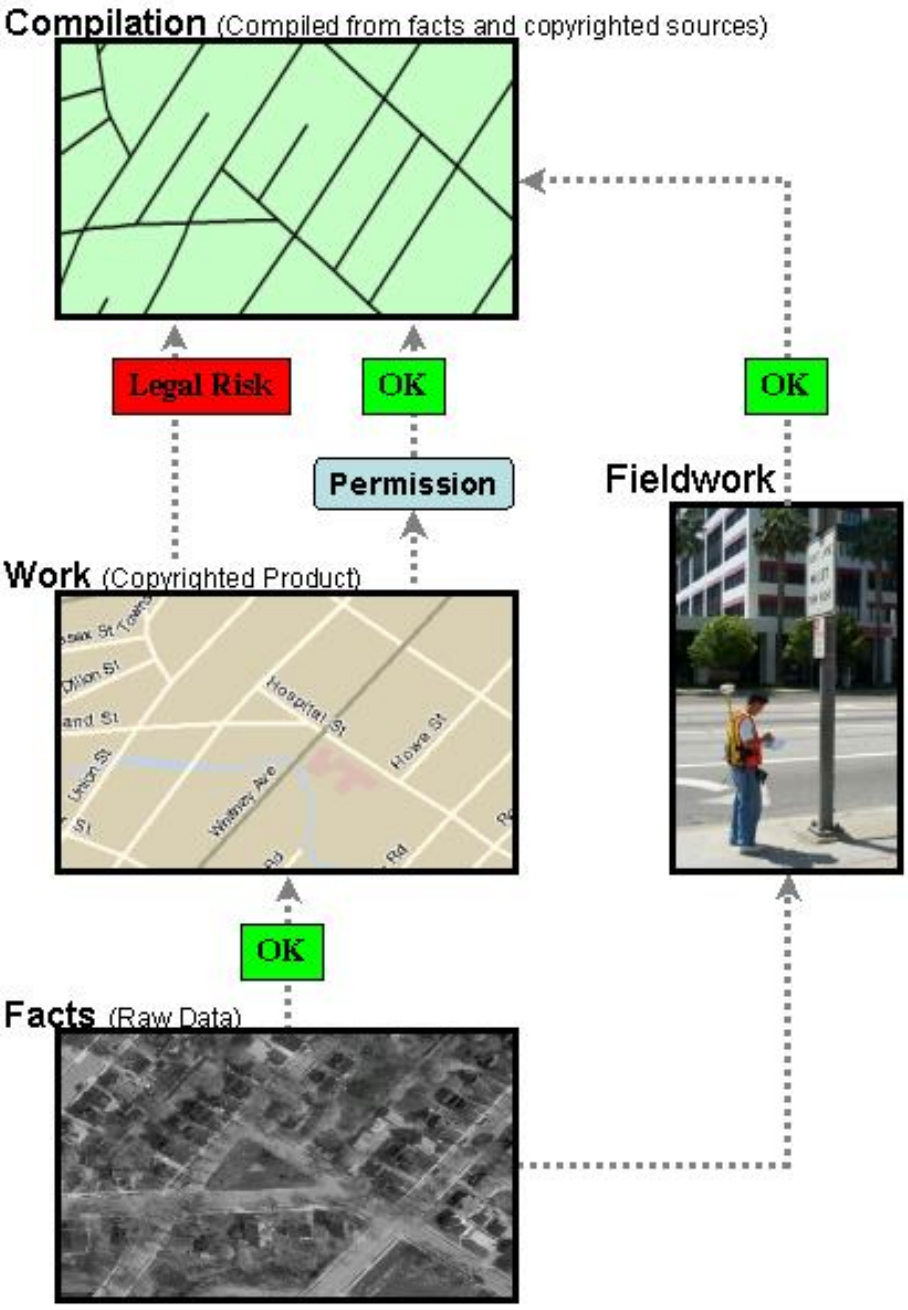
Government geographic data sets may consist of an arrangement of raw data such as facts, bare statistics, characters, symbols or other similar data; or may be comprised, in whole or in part, of other copyrighted works.

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.[13]

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.

[13] 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



4.2 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.

4.3 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. Access to Crown-owned or Crown-licensed intellectual property is granted to users through licence agreements. 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.

4.3.1 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[14] 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[15] 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

[14] 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.

[15] 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

and real. The main areas in which Crown prerogative has survived and remains relevant today include:

- 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.

4.3.2 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*[16], 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[17].

The Crown may also acquire rights in intellectual property consisting of inventions pursuant to the *Public Servants Inventions Act*[18] 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*[19] 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

[16] *Copyright Act*, R.S.C. 1985, c. C-42.
[17] Sections 12 and 13(3) of the *Copyright Act*. Note that this position can be modified by simple agreement.
[18] *Public Servants Inventions Act*, R.S.C. 1985, c. P-32.
[19] See http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/Contracting/tipaucpc_e.asp

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.

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 type 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.

4.3.3 Federal Statutory and Policy Constraints on Disposition of Crown Intellectual Property

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

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 or the applicability of the *Public Servants Inventions Act*,[20] no transfer of Crown property, including intellectual property, may be effected without complying with the *Financial Administration Act*, which requires regulatory authority or an order in council, and with the *Disposal of Surplus Crown Assets Act* and appurtenant Treasury Board policy.

4.3.4 Provincial/Territorial Statutory and Policy Constraints on Disposition of Crown Intellectual Property

[TO COMPLETE WITH INPUT FROM CCOG WORKING GROUP]

[20] The *Public Servants Inventions Act* allows a Minister to dispose of the Crown's rights in an invention made by a public servant. Geographic data does not, however, qualify as an invention.

CHAPTER 5

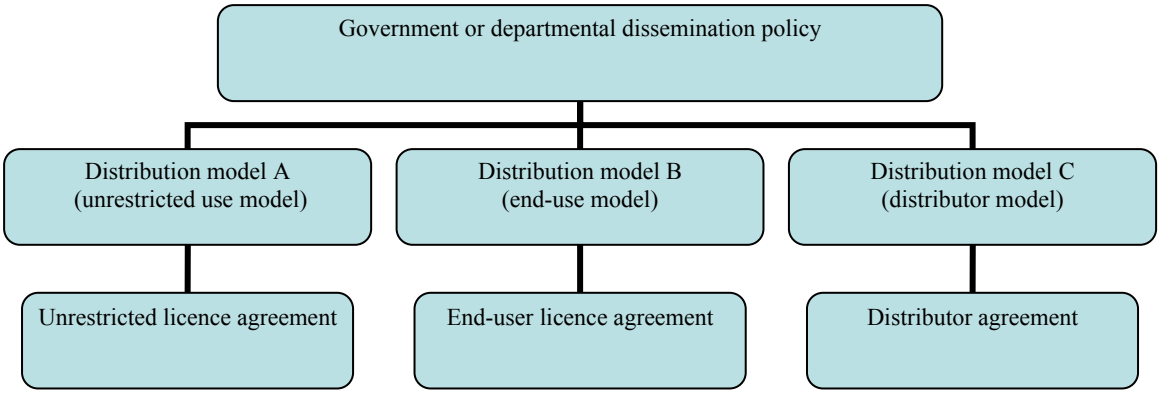
INTEGRATED FRAMEWORK FOR THE DISSEMINATION AND LICENSING OF GOVERNMENT GEOGRAPHIC DATA

5.1 Context

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 initiatives of departments and agencies, particularly in the development of distribution models, 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, distribution models and licence agreements.



Over the period 2002-04, the GeoConnections Policy Node superintended the development of three distribution models for the dissemination of government geographic data, as well as the development of 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 following sections of this chapter detail the rationale for each distribution model within an integrated framework for the dissemination and licensing of government geographic data, as well as provide extensive commentary on recommended approaches to key data distribution issues, and standard clauses for use in licence agreements.

5.2 Models of Distribution of Government Geographic Data

The integrated framework for the dissemination and licensing of government geographic data advocates the use of three (3) data distribution models for government geographic data, articulated in specific licence agreements.

5.2.1 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 geographical data. It contains few restrictions on how the data may be used and specifically allows its further distribution.

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

The standard unrestricted use licence agreement found in Appendix A 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 geographic data. Accordingly, the standard unrestricted use licence agreement contains only those restrictions considered as being consistent with the objectives of the unrestricted use model, being:

- widest use and distribution of the licensed geographic data;
- indemnification and control of liability;
- promotion of intellectual property development by the licensee; and

- acknowledgement of source and incorporation of Crown-furnished metadata in downstream distribution or applications containing any of the licensed geographic data

5.2.2 End-Use Model

The second model provides for certain rights to the geographic data being licensed to the licensee, except distribution rights. 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 Crown-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.

Restrictions contained in an end-user licence agreement are typically limited to the licensed data. They impact on derived products only insofar as precluding the distribution of derived products which contain the originally licensed data in its entirety or part(s) thereof, for uses other than the

licensee's uses[21].

The standard end-user licence agreement found in Appendix B illustrates the two pivotal prongs of an end-use licence agreement, being wide access of the licensed data, with restrictions on further distribution.

5.2.3 Distributor 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 distributors, whose strengths often lie in their capacity to integrate licensed data and/or services into products with greater market demand, and to capitalize on this demand through wider distribution channels[22]. The third model used within the integrated framework for the dissemination and licensing of government geographic data thus involves government geographic data producers entering into distribution arrangements with established distributors.

The distributor model is appropriate where the stated objective of the government geographic data-producing department or agency is to promote wide use of its data in value-added applications 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.

5.3 Key Concepts of the Integrated Framework for the Dissemination and Licensing of Government Geographic Data

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

Extensive, broad-based consultations have led to the development of common approaches to key issues on:

[21] See section 5.3.1 below for a discussion of a common approach to derived products.
[22] See Section 5.4 for an illustration of how the distribution model is generally utilized

- derived products;
- the right to make modifications to the licensed data;
- managing legal risk;
- acknowledgement of source and incorporation of Crown-furnished metadata;
- fees and royalties;
- term; and
- termination and surviving obligations

5.3.1 Common Approach to Derived 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.[23] 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 licence agreements, which, in support 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 derived products.

A derived product is one that incorporates any of the licensed data, or which uses the licensed data as input to the creation of something new. The method of incorporating the licensed data or of using it to "derive" soemthing else from it is not at issue. The licensed data may be incorporated through automated data transfer or transformation, hand digitizing, manual copying, etc.

Licensees of government geographic data should generally have the right to develop, manufacture and distribute commercially derived products they have or have caused to be created, which incorporate or derive from the licensed geographic data. Such is the approach that has been taken in respect of the unrestricted model and the distributor distribution model set out within the integrated framework.

End-use licensees should also generally have the right to improve upon the licensed government geographic data and create derived products. However, given the rationale underlying the end-use

[23] There are similar drivers in the provinces.

model and its primary goal of control over the further distribution and use of the licensed geographic data, derived products containing the originally licensed data, in whole or in part, should not be permitted. Derived products not containing any of the originally licensed data may, under the end-use model, be produced and further distributed.

The standard licence agreements found in Appendices A, B and C detail this approach to derived products.

5.3.2 Common Approach to the Right to Make Modifications and Ownership of Resulting Intellectual Property Rights

Mindful of the government's objective to spur innovation by making government intellectual property accessible, the approach advocated permits licensees to further improve and make modifications to licensed government data; and to retain the intellectual property rights in such modifications. Licensees who make modifications to the licensed government data also bear responsibility for such modifications.

Clauses reflecting this approach are contained in the annexed standard licence agreements.

5.3.3 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 an anticipated 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 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 data in question; and

- an undertaking of the licensee to indemnify and hold harmless the producer of the government geographic data from claims attributable to the acts or conduct of the licensee, including third party intellectual property infringement claims.

- **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[24]. 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 refrain from providing representations and warranties on 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.

5.3.4 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 geographic data and incorporate metadata supplied with the said data in any downstream distribution [25].

The approach advocated and expressed in the standard licence agreements is more fully described in section 6.5 below.

5.3.5 Common Approach to Fees and Royalties

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

Fees and royalties schemes typically take one (1) of three (3) forms:

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[24] Licensees usually do not have much to represent and warrant, except in the case of commercialization agreements.

[25] 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.

- 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; or

    - it may be a fixed sum per article.

  All depends, essentially, on the manner in which the licensed intellectual property is to be exploited;

- a combination of fixed fee 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.

5.3.6 Common Approach to Term

"Duration" or "term of agreement" relates to the period of time during which the licence persists. The duration may be based on a specific length of time (e.g. from June 1, 2003 to May 31, 2004) or may be based upon the payment of yearly access fees.

The term is to be defined with an effective date for its commencement and a termination date, the latter to be made subject to other provisions in the licence agreement providing for early termination.

The term of a licence grant usually coincides with the term of the licence agreement. 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, in the context of the integrated framework for the dissemination and licensing of

government geographic data, terms renew automatically, provided the licensee is not in breach of its obligations under the agreement (e.g., payment of fees and royalties).[26]

In the context of a distributor arrangement, particular attention must be paid to the length of the appointment of the distributor and the rights granted to it. For economic reasons, distributors will be particularly concerned with the duration of the distributor agreement (wanting longer terms) and the availability of renewal terms.

In law, a person cannot grant or sub-licence that which it does not have. A distributor cannot therefore grant to a third party a licence the term of which exceeds the term of the distributor's own licence. Distributors will therefore be looking for terms the length of which will enable them to actively promote the data licensed to them, seek licensees and enter into profitable arrangements with them.

This approach in respect of the term is reflected in the appended standard licence agreements.

5.3.7 Common Approach to Termination and Surviving Obligations

It is recommended in the context of the integrated framework for the dissemination and licensing of government geographic data that government departments or agencies, as licensors, be given the right to terminate the agreement, for cause, either automatically or upon notice to the licensee. Typical events that may trigger the right of government departments or agencies (again as licensor) to immediately terminate an agreement include:

- unauthorized sub-licensing;
- unauthorized subcontracting;
- acting beyond territorial limits;
- default in payment of fees and/or royalties;
- exploitation of intellectual property outside the licensed rights; and
- breach of a representation or warranty.

In addition, 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.

[26] 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.).

In general, the licensee should be able to terminate an agreement with or without cause on notice to the licensor. Such termination should not, however, affect those obligations meant to survive termination. Termination may also be concluded upon mutual agreement of the licensor and licensee.

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.

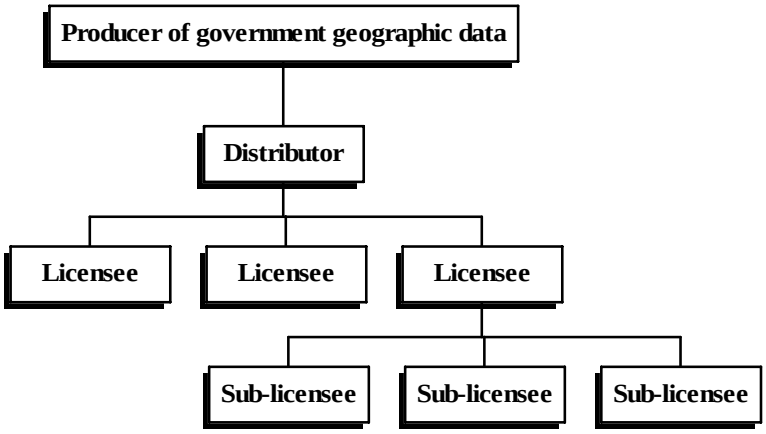
This common approach is reflected in the appended standard licence agreements.

5.4 Variants of the Distributor Model

Discussions with producers and distributors of government geographic data revealed two variants to the distributor model discussed in section 5.2 above which merit attention: the tertiary model; and the distributor end-user model.

5.4.1 Tertiary Model

Under the tertiary model, a producer of government geographic data enters into a licence agreement with a distributor for the further distribution of its geographic data, or that to which the government department or agency has licensed rights. To mitigate the legal risks associated with the distribution of government geographic data via a distributor, the producer of the government geographic data provides the geographic data to the distributor on an "as is" basis, with no representations or warranties as to its accuracy, completeness, usefulness, etc. The licence agreement between the distributor and the producer of government geographic data allows the distributor to license the government geographic data to third parties (the "licensees") on the same terms as those prescribed in the distributor licence agreement. Accordingly, government geographic data licensed by the distributor to licensees is done on an "as is" basis, without any representation or warranties as to the accuracy, completeness, usefulness, etc. of the licensed data. Licensees, in turn, are authorized by the terms of their licence agreement with the distributor to enter into sub-licences with other third parties (the "sub-licensees") on the same terms as those contained in their licence agreement with the distributor. The tertiary model is illustrated in the diagram below:



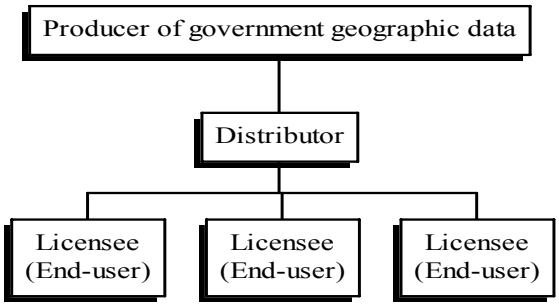
The tertiary model permits an expanded market penetration of the licensed government geogrpahic data, especially with further value-added data integration or service delivery, a potential increase in revenues for the distributor, and greater potential for the recovery of government data distribution costs.

While meeting the first objective of promoting the wide distribution of government data, the tertiary model has the potential for a certain loss of control over the licensing process because of the extended chain of distribution that can be created under such a model. It has no means of ensuring, for instance, that provisions are included in the downstream licences. Neither does it have the means to ensure that the provisions regarding cost-recovery and reporting obligations contained in the agreement between the distributor and the producer of the licensed government geographical data are perpetuated and optimized in downstream licences. In most cases however, the extension of the distribution chain does result in the increased use and value of government geographic information, and with increased potential for revenue flows for all parties.

5.4.2 Distributor End-User Model

The distributor end-user model operates in the same way as the tertiary model, with government geographic data provided to a distributor for further distribution, on an "as is" basis, with no representations or warranties as to its accuracy, completeness, usefulness, etc. However, the distributor end-user model only authorizes distribution by the distributor to one or more licensees as end-users. Distribution downstream the distributor's licensees is expressly prohibited under this distribution model.

The distributor end-user model is illustrated below:



Under the distributor end-user model, the potential use and value of government geographic data may be slightly more constrained as a result of the possible truncation of the distribution chain, however, the existence of a single distribution source strengthens the capacity to monitor downstream licences and assessment of revenue potential.

5.4.3 Viability of the Tertiary and Distributor End-User Models

Both the Tertiary and Distributor End-User Models are workable and feasible distribution models that meet the underlying rationale of dissemination of government geographic data. While there may be some intricacies particular to each model, these can usually be addressed satisfactorily in contractual provisions.

CHAPTER 6

CONTRACTUAL PROVISIONS FOR USE WITHIN THE INTEGRATED FRAMEWORK FOR THE DISSEMINATION AND LICENSING OF GOVERNMENT GEOGRAPHIC DATA

The distribution models proposed within the integrated framework for the dissemination and licensing of government geographic data are built on a common base supportive of government geographic data dissemination objectives and which emphasize a common approach to the fulfilment of those objectives.

This common base is reinforced and made evident by common structures and content across the three (3) types of licence agreements, superseded only by a limited number of specific provisions required to fulfill particular governmental geographic data dissemination objectives.

Essential components to be included in all three types of licence agreements pertaining to the dissemination of government geographic data are set out in the following sections:

6.1 Preamble

The preamble is the introduction to the licence agreement. It serves essentially two functions: it identifies the contracting parties; and provides background or contextual information.

- **Identification of the Parties**

A licence agreement typically has an introductory portion introducing the parties to the agreement. Paper supported licence agreements usually contain the following introduction:

This licence agreement made as of the ____ day of _____, 200___

Between: Her Majesty the Queen in Right of Canada, as represented by the Minister of _____ (the "Licensor")
And: _____ (the "Licensee")

The introductory portion of an electronic Crown licence agreement is usually preceded by an advisory worded as follows:

NOTICE TO USERS: PLEASE READ THIS LICENCE AGREEMENT FOR DIGITAL DATA CAREFULLY BEFORE PRESSING THE "I AGREE" BUTTON BELOW. BY PRESSING "I AGREE", YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PRESS "I DISAGREE", IN WHICH CASE YOU WILL NOT BE PERMITTED TO ACCESS AND USE THE DATA.

followed by a shortened introductory portion, in the following terms:

This is a legal agreement between you (the "Licensee") and Her Majesty the Queen in Right of Canada, as represented by _____[insert name of department or federal agency] (the "Licensor").

Irrespective of the manner in which the licence agreement is concluded, the parties should be clearly identified.

- **Background to the Transaction**

The preliminary part of a licence agreement also includes recitals which serve to acquaint someone who is not familiar with the transaction by:

- reciting the background behind and leading up to the transaction; and
- providing a summary of the purpose of the licence agreement, by stating who grants what intellectual property rights to whom.

Recitals also include a statement that the parties agree to be bound by the terms of the licence agreement.

- **Recitals Common to All Three Licence Agreements**

Recitals in a government geographic data licence agreement may properly read as follows:

I WHEREAS the Licensor is the owner or licensee of intellectual property rights in and to the digital data contained in the database known as _____ (the "Data");

II AND WHEREAS the Licensee wishes to obtain certain rights to the Data, in accordance with the terms and conditions herein contained;

III AND WHEREAS the Licensor wishes to grant to the Licensee certain rights to the Data, in accordance with the terms and conditions herein contained;

IV AND WHEREAS the Licensor represents that it has full authority to grant the rights desired by the Licensee on the terms and conditions herein contained;

V AND WHEREAS the parties hereto are desirous of entering into a licence agreement on the basis herein set forth.

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

6.2 Definitions

- **Common to All Three Licence Agreements**

Definitions to be contained in **all three types** of licence agreements pertaining to dissemination of government geographic data include the following:

- **Agreement**

  "Agreement" means this licence agreement and all schedules annexed to this agreement, as the same may be amended from time to time in accordance with the provisions hereof.

- **Data**

  "Data" means any original and fixed digital data (i.e. that is transmitted electronically), metadata, software or documentation licensed pursuant to the terms and conditions of this Agreement, described more fully in Schedule "A" attached hereto.

- **Intellectual Property Rights**

  "Intellectual property rights" means any and all intellectual property rights recognized by the law, including any intellectual property rights protected through legislation, such as that governing copyright and patents.

- **Licensor's Data**

"Licensor's Data" means that Data, the Intellectual Property Rights of which vest with the Licensor.

- **Licensor's Licensed Rights**

It is important to differentiate between that Data which is owned by the Licensor, and that which is not, but is nonetheless licensed to the Licensor. An appropriate clause may read as follows:

"Licensor's Licensed Rights" means those rights conferred upon the Licensor by third parties over the use of Data which is not the Licensor's Data.

- **Modifications**

"Modifications" means any modification, enhancement, translation, update or upgrade of all or any part of the Data, in any medium.

▪ Specific to an Unrestricted Use Licence Agreement and a Distributor Agreement

- **Derived Products**

In the Unrestricted Use and Distributor models, the full range of derived products and services is permitted. In the End-User model, derived products and services are limited to those that do not contain, in whole or in part, any of the originally licensed data. See section 5.3.1 for a discussion of the common approach to derived products. A definition of "Derived Products" for inclusion in an unrestricted use licence agreement and/or a distributor agreement could read as follows:

"Derived Products" means any product or service created from, or made functional through the use of all or part of the Data.

▪ Specific to an End-User Licence Agreement

- **Derived Products**

A suitable definition of "Derived Products" in the context of an end-user licence agreement may be as follows:

"Derived Products" means any product or service that derives from the Data, but that does not incorporate the Data, in whole or in part.

- **Specific to a Distributor Agreement**

Given the distinctive nature of a distributor arrangement, the distributor agreement will contain some defined terms not found in neither the unrestricted use licence agreement nor the end-user licence agreement. Definitions contained in a distributor licence agreement will therefore include those discussed earlier and characterized as mandatory for inclusion in all three types of licence agreements pertaining to the dissemination of government geographic data, as well as the following:

- **Net Revenues (or Gross Receipts)**

  Consideration must be given to the method of calculating royalties.

  Royalties may be structured in a number of ways. They may consist of: 1) a percentage of moneys received by the distributor in exercising its licensed rights;2) strictly fees; 3) a combination of both; or 4) on the basis of per-unit sales. Given that producers of government geographic data operate under specific mandates, cost-recovery policies and other pressures, it is suggested that the selection of the royalty scheme be left to the discretion of the producer of government geographic data and be detailed in a schedule to the distributor agreement.

  However, irrespective of the selection of the royalty scheme, it is important that the basis from which the compensation will be calculated be clearly defined. For example, will the producer of the government geographic data receive 15% of the distributor's Gross Receipts? If so, it will be important to define Gross Receipts. Or should the compensation represent a portion of the Net Revenues. In such case, the term *Net Revenues* will require definition.

  Given the acknowledged need for flexibility in determining appropriate royalty schemes, it is suggested that whatever term is used as a basis for calculating royalties be succinctly defined in the distributor agreement, with a reference to a fuller description in a schedule. For example, if the notion of *Net Revenues* was to be retained, it is suggested that it be defined in the distributor licence agreement as follows:

  "Net Revenues" means the total revenue obtained by the Distributor, either directly or indirectly from or related to the exercise by the Distributor of its rights under section ___ of this Agreement, less any deductions specified, all of which is more fully described

in Schedule _____ attached hereto.

- **Market**

The distributor may be given the right to exercise its licensed rights and other related obligations in relation to a specified market (for example, post-secondary education establishments). Where such is the case, the term requires definition, which may be worded as follows:

"Market" means [set out the appropriate market].

- **Territory**

The distributor may be afforded the privilege to exercise its licensed rights only in a given geographic area (for example, in Canada only). Where such is the case, it is appropriate to define the term. It is also in some instances useful to visually delineate it by including in a schedule to the agreement a map with the highlighted geographical area. Accordingly, Territory may be defined as follows:

"*Territory" means the geographical territory designated in Schedule ____ attached hereto."*

6.3 Intellectual Property Rights

Governmental producers of geographic data will provide licensees with access to: 1) Crown intellectual property; and/or 2) to intellectual property of a third party licensed to the Crown, with corresponding sub-licensing rights.

Accordingly, the Crown will seek to ensure that ownership of the intellectual property licensed to the licensee, whether it consists of Crown intellectual property, of intellectual property licensed to the Crown or a combination of the two, is clearly set out in the licence agreement.

- **Common to All Three Licence Agreements**

An appropriate confirmatory statement may be worded as follows:

All title and Intellectual Property Rights in and to the Licensor's Data shall at all times remain the property of the Licensor. All title and Intellectual Property Rights in and to the Data that is not the Licensor's

[redacted]

Data, but rather refers to Licensor's Licensed Rights are the property of the respective content owners and may be protected by copyright, other intellectual property laws, common law or international treaties.

6.4 Grant Clause

The grant clause sets out the rights being granted. It 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
- sub-license 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 worldwide 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 of an unrestricted use licence agreement, of an end-user licence agreement and of a distributor agreement.

- **Specific to an Unrestricted Use Licence Agreement**

In support of the stated objective of the unrestricted use distribution model to promote widest use and dissemination of the licensed government geographic data, the grant clause would specifically authorize sub-licensing by the licensee. An appropriate clause would read as follows:

> *Subject to this Agreement, the Licensor hereby grants to the Licensee a non-exclusive, world-wide, fully-paid, royalty-free right and licence to exercise such of the Licensor's Licensed Rights and such of the Licensor's Intellectual Property Rights in the Data as is necessary to use, reproduce, extract, modify, translate, further develop, distribute the Data, manufacture or cause to be manufactured and sell or license or cause to be sold or licensed Derived Products, and to sub-licence any or all of such rights, PROVIDED:*
>
> *1) all reproductions of the Data shall carry the notices and metadata information set out in section _____ hereof and the caveat contained in section ____ hereof (no representation and warranties, indemnity, surviving obligations), to be amended in such circumstances by replacing the term "Licensor" as found in the aforementioned provisions with the Licensor's applied title or any such designation as the Licensor may indicate; and*
>
> *2) all distribution of the Data or sell or licensing by the Licensee of Derived Products containing the Data, and any sub-licence by the Licensee of its rights hereunder, shall be evidenced in writing, be on the same terms and conditions as contained herein and shall specifically include the provisions contained in sections _____ (acknowledgement of source, incorporation of metadata) and _____ (no representation or warranty, indemnity) hereof, to be amended in the circumstances by replacing in such agreements the term "Licensor" as found in the aforementioned provisions with the Licensor's applied title or any such designation as the Licensor may indicate.*

A no-royalty licence agreement may be transformed into a royalty-bearing licence, provided however such is not inconsistent with the dissemination objectives and internal policies of the relevant governmental department or agency. In such cases, details as to the revenue scheme and reporting requirements may be specified in a schedule to the licence agreement.

- **Specific to an End-User Licence Agreement**

Given the context of the GeoConnections initiative and the rationale underlying an end-user licence agreement, an appropriate grant clause to be contained in an end-user licence agreement would read as follows:

> *Subject to this Agreement, the Licensor hereby grants to the Licensee a non-exclusive, world-wide, non-transferable, non-assignable, fully-paid, royalty-free right and licence to exercise*

such of the Licensor's Licensed Rights and such of the Licensor's Intellectual Property Rights in the Data as is necessary to use, reproduce, extract, modify, improve, translate, further develop the Data or manufacture or cause to be manufactured Derived Products, for the Licensee's own use. The Licensee may also manufacture or cause to be manufactures Derived Products for further distribution, provided that these Derived Products do not contain any of the Data, in whole or in part.

The Intellectual Property Rights arising from any Modification or from the manufacture of Derived Products, effected by or for the Licensee, shall vest in the Licensee or in such person as the Licensee shall decide.

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

(a) disassemble, decompile or in any way attempt to reverse engineer software associated with the Data; or

(b) reproduce, publish, communicate or redistribute the Data or any part thereof, to any party, for any purpose whatsoever.

The Licensee shall comply with any and all additional restrictions on use set out in Schedule(s) "_" attached hereto.

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

- **Specific to a Distributor Agreement**

In the context of the GeoConnections initiative, and absent any policy reason which would warrant limiting rights of distributors to redistribution activities only, rights granted to distributors should confer upon them the necessary rights to engage in the simple distribution of the licensed government geographic data and to add value to the said data prior to its distribution.

Rights that may properly be granted in a distributor agreement include the right to use, reproduce and license the data (via written sub-licenses), as well as the right to translate and modify it for the purpose of making derived products.

As discussed above, it is appropriate in the context of a distributor arrangement pertaining to the distribution of government geographic data to confine the exercise of the distributor's right to license to the terms of a mutually agreed-upon end-user licence agreement.

Generally, there is either an exclusive or non-exclusive appointment of the distributor as distributor of the licensed government geographic data, limited by one or more of the following: 1) geographic area; 2) market; 3) licensed data; and 4) duration. Exclusive appointments[27], given their inherent definitional characteristics, may however impede the widespread distribution of the data by centralizing distribution rights to one locus, thereby frustrating the realization of one or more of the stated objectives of a distributor arrangement. In addition, exclusive appointments may constrain the ability of a government geographic data department or agency to fulfill its legislative mandate or to meet specific and overarching strategic goals. It is therefore suggested that, as a matter of general practice, producers of government geographic data wishing to benefit from established distribution channels enter into non-exclusive distributor arrangements.

As discussed in subsection 5.4 above, there are essentially two (2) variants of the distributor model:

1) the tertiary model; and

2) the distributor end-user model.

The licence grant in a tertiary distribution agreement may be expressed as follows:

> *Subject to this Agreement, the Licensor hereby appoints the Distributor and the Distributor hereby accepts such appointment, as a non-exclusive distributor of the Data, and grants to the Distributor a non-exclusive, non-transferable, non assignable right and licence to exercise such of the Licensor's Intellectual Property Rights and such of the Licensor' Licensed Rights in the Data, in the Territory, to:*
>
> *a) use and reproduce the Data for the purposes of carrying out promotion, marketing and distribution of the Data to the Market, provided any and all reproductions of the Data shall carry the notices and metadata information set out in section ___ hereof and the caveat contained in section ___ hereof (no representation and warranties, indemnity, surviving obligations), to be amended in such circumstances by replacing the term "Licensor" as found in the aforementioned provisions with the Licensor's applied title or any such designation as the Licensor may indicate;*
>
> *b) reproduce and license the Data to the Market, provided such licences shall be evidenced in writing, shall be on the same terms and conditions as contained herein and shall specifically include the provisions contained in sections ___ , ___ and ____ hereof (acknowledgment of source, incorporation of metadata, no representation and warranties, indemnity, surviving obligations), to be amended in the circumstances by*

[27] An exclusive right gives the licensee the right to exercise the licensed rights at the exclusion of others, including the licensor.

replacing, in any such licence agreements, the term "Licensor" as found in the aforementioned provisions with the Licensor's applied title or any such designation as the Licensor may indicate;

c) use, reproduce, translate and modify the Data for the purpose of making, or causing to be made, and sell or license or cause to be sold or licensed, Modifications and/or Derived Products, provided such Modifications and/or Derived Products shall carry the notices and metadata information set out in section ___ hereof and the caveat contained in section ___ hereof (no representation and warranties, indemnity, surviving obligations), to be amended in such circumstances by replacing the term "Licensor" as found in the aforementioned provisions with the Licensor's applied title or any such designation as the Licensor may indicate; and

d) license to third parties such of the Data as may be incorporated in Derived Products, provided such licences shall be evidenced in writing, shall be on the same terms and conditions as contained herein and shall specifically include the provisions contained in sections ___, ___ and ____ hereof (acknowledgment of source, incorporation of metadata, no representation and warranties, indemnity, surviving obligations), to be amended in such circumstances by replacing the term "Licensor" as found in the aforementioned provisions with the Licensor's applied title or any such designation as the Licensor may indicate.

The licence grant in an end-user distributor agreement may be expressed as follows:

Subject to this Agreement, the Licensor hereby appoints the Distributor and the Distributor hereby accepts such appointment, as a non-exclusive distributor of the Data, and grants to the Distributor a non-exclusive, non-transferable, non assignable right and licence to exercise such of the Licensor's Intellectual Property Rights and such of the Licensor' Licensed Rights in the Data, in the Territory, to:

a) *use and reproduce the Data for the purposes of carrying out promotion, marketing and distribution activities targeted to the Market, provided any and all reproductions of the Data shall carry the notices and metadata information set out in section ___ hereof and the caveat contained in section ___ hereof (no representation and warranties, indemnity, surviving obligations), to be amended in such circumstances by replacing the term "Licensor" as found in the aforementioned provisions with the Licensor's applied title or any such designation as the Licensor may indicate;*

b) *reproduce and license the Data to the Market, provided such licences shall be evidenced in writing, shall be on the same terms and conditions as contained herein*

without, however, granting sub-licensing rights, and shall specifically include the provisions contained in sections ___ , ___ and ____ hereof (acknowledgment of source, incorporation of metadata, no representation and warranties, indemnity, surviving obligations), to be amended in the circumstances by replacing, in any such licence agreements, the term "Licensor" as found in the aforementioned provisions with the Licensor's applied title or any such designation as the Licensor may indicate. For greater clarity, licences granted by the Distributor in the exercise of its rights hereunder shall specifically provided that licensees of the Distributor shall have no right to further distribute the Data;

c) use, reproduce, translate and modify the Data for the purpose of making, or causing to be made, sell or license or cause to be sold or licensed, Modifications and/or Derived Products, provided such Modifications and/or Derived Products shall carry the notices and metadata information set out in section ___ hereof and the caveat contained in section ___ hereof (no representation and warranties, indemnity, surviving obligations), to be amended in such circumstances by replacing the term "Licensor" as found in the aforementioned provisions with the Licensor's applied title or any such designation as the Licensor may indicate; and

d) license to third parties such of the Data as may be incorporated in Derived Products, provided such licences shall be evidenced in writing, shall be on the same terms and conditions as contained herein without, however, granting sub-licensing rights, and shall specifically include the provisions contained in sections ___ , ___ and ____ hereof (acknowledgment of source, incorporation of metadata, no representation and warranties, indemnity, surviving obligations), to be amended in the circumstances by replacing, in any such licence agreements, the term "Licensor" as found in the aforementioned provisions with the Licensor's applied title or any such designation as the Licensor may indicate. For greater clarity, licences granted by the Distributor in the exercise of its rights hereunder shall specifically provided that licensees of the Distributor shall have no right to further distribute the Data.

The model agreement contained in Appendix C is for the tertiary model.

6.5 Acknowledgement of Source and Incorporation of Metadata

It is appropriate, and consistent with the dissemination rationale and Treasury Board policy, that the licensee:

1) acknowledge the appropriate government department or agency as the source of the

licensed data; and

2) incorporate metadata included in the provision of the government's or agency's data,

in all downstream distribution of government geographic data or applications containing any of the said data.

- **Common to the Unrestricted Use Licence Agreement and to the Distributor Licence Agreement**

Requirements for acknowledgments of source and for the incorporation of government or agency metadata, appropriate for insertion in an unrestricted use licence agreement and in a distributor agreement, may be formulated as follows:

> *The Licensee* (or Distributor, as the case may be) *shall include the following notice where any of the Data is contained within Derived Products,*
>
> > *Source (or "Adapted from", if appropriate): _____ (applied title of Licensor), _____ (name of products), _____ (specific identifiers)*
> >
> > *The incorporation of data sourced from _____ (applied title of Licensor) within this product shall not be construed as constituting an endorsement by _____ (applied title of Licensor) of such product.*
>
> *or any other notice deemed appropriate by the Licensor.*
>
> *The Licensee* (or Distributor, as the case may be) *shall reproduce, include and maintain the following notice on all reproductions of the Licensor's Data produced pursuant to Section 3 above:*
>
> > *Reproduced with the permission of _____ (applied title of Licensor)*
>
> *The Licensee* (or Distributor, as the case may be) *shall incorporate in all reproduction and downstream distribution of the Data all metadata included by the Licensor in the provision of the Data.*

- **Specific to an End-User Licence Agreement**

An appropriate provision for inclusion in an end-user licence agreement could provide simply as follows:

The Licensee shall reproduce, include and maintain the following notice on all reproductions of the Data produced pursuant to section 3.1 above:

Reproduced with the permission of ___ (name of Licensor).

The Licensee shall incorporate in all reproduction of the Data produced pursuant to section 3 hereof all metadata included by the Licensor in the provision of the Data.

6.6 Fees and Royalties

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 relevant clause in the licence agreement could be worded as follows:

In consideration of the rights and licences granted under this Agreement, the Licensee shall pay to the Licensor the fee or fees prescribed in Schedule "___" attached hereto, in the manner set out in said Schedule.

6.7 Representations, Warranties, Indemnities

An indemnity clause is only as useful as the financial viability of the licensee. Sometimes, in order to ensure that the licensee is able to meet the requirement to indemnify, government departments and agencies require that the licensee procure insurance coverage naming the government department or agency as "additional insured".

- **Common to All Three Licence Agreements**

Appropriate clauses for insertion in the unrestricted use licence agreement, end-user licence agreement and distributor agreement would read as follows:

The Licensor makes no representation or warranty of any kind with respect to the accuracy, usefulness, novelty, validity, scope, completeness or currency of the Data, at any time or from time to time, and expressly disclaims any implied warranty of merchantability or fitness for a particular purpose of the Data. The Licensor does not ensure or warrant compatibility with past, current or future versions of computer software to access the Data.

The Licensee acknowledges having received notice of the disclaimer set out above and accepts the Data on an "as is" basis, without representations or warranties of any kind. No

oral or written information or advice given by the Licensor, at any time or from time to time, shall create or evidence, or be deemed to create or evidence, a contractual representation, warranty or guarantee of any kind.

The Licensee shall have no recourse against the Licensor, its officers, directors, employees, authorized agents and contractors, 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 Data or arising out of the exercise by the Licensee of its rights hereunder.

The Licensee shall indemnify the Licensor and its officers, directors, employees, authorized agents and contractors from all claims whatsoever alleging loss, costs, expenses, damages or injuries (including injuries resulting in death) arising out of the Licensee 's possession or use of the Data or the exercise by the Licensee of its rights hereunder.

The Licensee's obligation to indemnify the Licensor under this Agreement shall not affect or prejudice the Licensor from exercising any other rights under law.

The provisions of this Article ____ shall survive termination of this Agreement.

- **Specific to a Distributor Licence Agreement**

In addition to the representations mentioned above, a distributor licence agreement would also include basic representations and warranties from the distributor. These may include the following:

The Distributor represents and warrants that:

(i) it has the capacity and resources to exercise the rights herein granted to it and to fulfill its obligations under this Agreement; and

(ii) there are no legal impediments to the carrying out of the Distributor's rights and obligations under this Agreement.

6.8 Term

The following term provision is appropriate for use in an unrestricted use, end-user and distributor licence agreement:

This Agreement is effective as of _____ and shall remain in effect for a period of ____ (_) years, subject to subsections _____ below.

At the end of the first term, this Agreement shall automatically be extended for successive _____(___)- year terms, subject to subsection ___ below, provided the Licensee is not then in breach of any of the terms and conditions of this Agreement.

6.9 Termination and Surviving Obligations

A typical Termination and Surviving Obligations clause for insertion in an unrestricted use, end-use or distributor licence may provide as follows:

This Agreement may be terminated prior to its expiration:

(i) automatically and without notice, if the Licensee commits or permits a breach of any of its covenants or obligations under this Agreement

(ii) upon written notice of termination by the Licensee at any time, and such termination shall take effect thirty (30) days after the receipt by the Licensor of such notice; or

(iii) upon mutual agreement of the Parties.

Upon the expiration or termination of this Agreement, for whatever reason, the Licensee's rights under section ___ (grant section) shall immediately cease; and all obligations of the Parties which expressly or by their nature survive expiration or termination shall continue in full force and effect subsequent to and notwithstanding such expiration or termination, until they are fully satisfied or by their nature expire. For greater clarity, but without restricting the generality of the foregoing, the following provisions survive expiration or termination of this Agreement:

_____ (fees and royalties – set out in Schedule)
_____ (records and audit - set out in Schedule)
_____ (indemnity, insurance)

Specific to an Unrestricted Use Licence Agreement and Distributor Licence Agreement

To ensure that third parties (other than licensees) who have legitimately obtained rights to the Data are not prejudiced by an early termination of the licence agreement, it would be advisable to include in unrestricted use licence agreements and distributor agreements, in addition to the foregoing clause,

this provision:

> *Notwithstanding subsection ___above, the Licensee may continue to use the Data for the purpose of completing orders of Derived Products made before the termination date of this Agreement; provided that the Licensee shall continue to pay royalties and to fulfill its reporting obligations set out in Schedule "__" attached hereto.*
>
> *Notwithstanding the expiration or termination of this Agreement, all agreements entered into by the Licensee in the exercise of its rights under section ____ hereof prior to such expiration or termination and all obligations imposed therein shall continue in full force and effect subject to their terms.*

6.10 Generalities Common to All Three Licence Agreements

- **Governing law**

Dissemination through electronic means generally means 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. An appropriate clause on governing law would be:

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

- **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. Such a clause may be worded as follows:

> *This Agreement, together with its recitals and Schedule(s) _____ appended hereto, constitutes the entire agreement between the Parties with respect to its subject matter. It may only be amended in writing, signed by both parties, which expressly state the intention to amend this Agreement.*

- **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 an arbitration clause, also called an alternative dispute resolution (ADR) clause, which provides that the parties will attempt to resolve disputes concerning the licence agreement or proposed modifications thereto:

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

It is also standard practice that the costs of any ADR mechanism be equally borne by the parties.

An alternate dispute resolution clause may be articulated as follows:

> *If a dispute arises concerning this Agreement, or if a proposed modification of any term of this Agreement cannot be agreed between the parties, the parties shall attempt to resolve the matter first by negotiation.*
>
> *If the parties have not succeeded in negotiating a resolution, then they shall jointly submit the dispute to a mutually accepted mediator. If the parties cannot agree on an acceptable mediator, then either rparty may submit the dispute to binding arbitration.*
>
> *The arbitral tribunal shall be governed by the UN Commercial Arbitration Code (the "Code"), referred to in the Commercial Arbitration Act, R.S.C" 1985, c. C-4.6, and judgment upon the award rendered by the arbitral tribunal may be entered in any court having jurisdiction over the matter.*
>
> *The arbitral tribunal shall consist of one arbitrator chosen by the parties.*
> *Subject to the Code, the parties agree that the award and determination of the arbitral tribunal shall be final and binding on both parties, shall be without right of appeal and shall be the exclsuvie remedy between the parties regarding any claims, counterclaims, issues or disputes presented to the arbitral tribunal.*
>
> *<u>Costs</u>*
>
> *The parties shall bear the costs of the mediation equally, except that each party shall bear its own personal costs of the mediation.*

The costs of the arbitral tribunal's fees and expenses shall be shared equally by the parties. The parties shall bear their own personal costs except that the losing party shall pay all costs, fees, levies and taxes arising from and necessitated by the enforcement of the arbitral tribunal's award, including, without limitation, registration, enforcement charges or other judicial levies or costs.

- **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 gent 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.

- **No Waiver**

This provision normally stipulates 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 is as follows:

No condoning, excusing or overlooking by the Licensor 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 the Licensor in respect of any continuing or subsequent default. No waiver of these rights will be inferred from anything done or omitted by the Licensor, except by an express waiver in writing.

- **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. For example:

[redacted]

If there is a conflict or ambiguity between this Agreement proper and any schedules thereto, the interpretation consistent with this Agreement proper (taking into consideration the statements in the recitals and headings) shall prevail and apply, notwithstanding any wording to the contrary in the applicable schedule.

6.11. Conclusion

The development of a single, integrated framework for government geographic data dissemination data is contingent upon the promotion and increased use of standard licensing terms. The contractual clauses highlighted above provide the common base upon which government geographic licence agreements are concluded. Deviations therefrom should not 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.

The models found in the appendices to this document have been drafted in collaboration with the Department of Justice. Any questions relating to their content should be directed to departments' legal services units.

CHAPTER 7
SUMMARY AND NEXT STEPS

The previous two chapters of the *Dissemination of Government Geographic Data*: *Guide to Best Practices* set out a detailed account of the fundamental concepts of an integrated framework for the dissemination and licensing of government geographic data, and provide standard clauses for the expression of these concepts as well as other important licensing protocol within standard licence agreements. These approaches have been vetted through wide discussion with government geographic data licensing departments, the federal Department of Justice, and data users.

Having discussed these approaches in detail, this chapter steps back from the details in order to provide a synopsis of the most important elements of the integrated licensing framework. This overview reinforces the key concepts presented in this volume for the dissemination and licensing of government geographic data, and provides an easy reference point for discussion and further refinement of the integrated licensing framework. These materials also lend themselves well for use in presentations, licensing workshops, and communications efforts targeted to non-specialists.

7.1 Comparison of Data Distribution Models Within the Framework

The central contribution of the *Dissemination of Government Geographic Data: Guide to Best Practices* is the formulation of an integrated framework for the dissemination of government geographic data, taking into consideration the three most commonly used approaches to licensing government geographic data. 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 agencies producing or distributing a variety of data for distribution 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.

A graphic overview of the integrated framework can be presented as follows:

Integrated Framework for the Dissemination and Licensing of Government Geographic Data Geographic Data			
	Unrestricted Use	**End Use**	**Distributor**
Primary Dissemination Objectives	➢ Promote the widest public use and private benefit of the data ➢ Promote wide recognition of government source ➢ Use to solicit interest in other data sets	➢ Promote use of data while retaining control on the number and/or type of user ➢ Recovery of costs associated with distribution ➢ Controlled use for security, data integrity reasons	➢ Promote wider use of data through access to established distribution channels ➢ Promote wider use through value added product / service development ➢ Recovery of costs associated with distribution
Positive Aspects	➢ Ease of administration ➢ Strong public support ➢ Public Relations	➢ Effective control of number / type of users ➢ Predictable impact on cost recovery	➢ Access to distributor's distribution channels ➢ Greater potential for cost recovery
Negative Aspects	➢ Reduced control over uses of data	➢ Administrative burden ➢ Potential inhibitor of wider use and value of data	➢ Administrative burden ➢ Reduced control over cost recovery ➢ Reduced control over uses of data
Appropriate Uses	➢ Marketing applications ➢ Data placed in the public domain ➢ Data sharing agreements	➢ Controlled use of data ➢ Retain data integrity ➢ Cost recovery	➢ Marketing applications ➢ Data with broad potential for value added ➢ Cost recovery

7.2 Core Components of the Distribution Models

Perhaps the greatest strength of the integrated framework set out above is that it affords an opportunity to make explicit the relationships between each dissemination model, to clarify distinctions, and to focus discussion on the objectives of data dissemination rather than the particularities of any given license agreement. In turn, this higher-level approach to the discussions can be used to engage senior managers and policy staff in the resolution of issues, with decisions being incorporated into subsequent revisions of the integrated framework.

Throughout the development of the integrated framework presented in this *Guide to Best Practices*, attention has been paid to the identification of core concepts for broad and common use. These concepts tend to find similar expression irrespective of dissemination model, as they stem from key data dissemination objectives. A review of common data licensing practices has also served to identify a variety of best practices as regards licensing protocols and important contractual details. These are also given common expression within the integrated framework.

The core concepts employed within the integrated framework are summarized in the following table. This table can be used as a quick reference chart to assist licensing practitioners and data users on the approaches advocated for use within the framework.

Core Components of the Data Distribution Models	
Licence Grant	►The primary objective of government data dissemination is to encourage maximal use and benefit of data produced at public expense, either directly by users, or through value added products and services delivered through intermediary parties. ➢ The licence grant outlines the terms governing authorized use of the licensed data. It will support the primary objectives of government data dissemination, tempered, however, where secondary objectives such as cost recovery or controlled use of the data are also of some importance.
Liability	➢ Licensor risk of liability as a result of damages incurred through use of the licensed data is managed, to the extent possible, through express delivery of the data in "as is" condition, and with no representation or warranty of any kind with respect to the accuracy, usefulness, novelty, validity, scope, completeness or currency of the Data. Where the licensed data may be further distributed by the licensee, this disclaimer of liability must form part of any sub-licence agreement.

Indemnification	➢ Indemnification acts to further manage the risk of licensor liability, to the extent possible, by requiring that the licensee warrant that they will not hold the licensor liable for damages arising from the use of the licensed data. ➢ Indemnification of the government data provider may not be enforceable in agreements struck between a data licensee and their own sub-licensees, to the extent that it can be managed. However, this does not materially elevate risk of government liability, as the sub-licensee would have to demonstrate that the government: ➢ 1) knew or ought to have known that the data delivered was not accurate; ➢ 2) owed a duty of care to the sub-licensee; and ➢ 3) that the sub-licensee incurred damages as a result of the government's negligence.
Acknowledgement	➢ Acknowledgement of government data source is expressed as a requirement to cite the data source and include any government-furnished metadata in any downstream products or services containing the originally licensed government data.
Derived Products	➢ A derived product is any product or service made operational through use of, or derived from the licensed government data. ➢ A key objective is to promote the development of derived products and services as a stimulus to socioeconomic growth. ➢ The end-user model restricts the further distribution only of derived products containing the originally licensed data.
Intellectual Property	➢ The intellectual property rights in the licensed data are never transferred as a result of the use or modification of the licensed data. ➢ Conversely, the intellectual property rights resulting from any extension or enhancement of the licensed data, or development of derived products or services rest with the party giving rise to those enhancements and developments.

Term and Termination of Contract	➢ The integrated framework recommends the use of automatically repeating terms of a fixed length. ➢ Termination of an agreement is affected automatically by breach of contract, by request from the licensee, or by mutual agreement.
Other Supporting Components	➢ The integrated framework employs the use of other standard clauses that reinforce and clarify various contractual aspects of each dissemination model for the benefit of the data producer and user. ➢ Common approaches are employed for preamble, most definitions, governing law, entirety of agreement, dispute resolution, etc.

7.3 The Way Forward: Refinement and Implementation of the Integrated Framework

The geographic data dissemination and licensing practices presented in this *Dissemination of Government Geographic Data*: *Guide to Best Practices* are the result of extensive discussion within government, and the private and academic sectors. 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 refining government data dissemination objectives, and the licensing practices necessary to achieve them. 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.

The GeoConnections Program has supported these discussions throughout, first by encouraging the start-up of small sub-groups under the GeoConnections Policy Node to discuss and develop a general approach to standard licence agreements, and more recently, through discussions of the results of this work within federal, provincial, and territorial discussion forums. In an effort to broaden the discussions, the GeoConnections Policy Node has pursued the start-up of selected communities of practice in government geographic data dissemination and licensing.

The chief objectives of forming such communities are to:

- facilitate development of common objectives for geographic data dissemination across government;
- share best practices for the dissemination and licensing of geographic data;
- promote convergence of best practices where possible;
- review and assess changes in case or contract law around a common table for the benefit all participants;
- serve as a resource for discussion, reference, and articulation of agency specific practices.

Within the federal government, the Inter-Agency Committee on Geomatics (IACG) represents the

single largest community of government departments and agencies involved in the production or use of government geographic data. The IACG has intensified the discussion of a number of key policy issues over the past year, one of which has been a proposal to establish a Work Group on Geographic Data Dissemination and Licensing Practices. This proposal received wide support from the IACG Steering Committee, comprised of Assistant Deputy Ministers of member departments and agencies. The Work Group has been established, with early focus on common approaches to disclaimers and acknowledgement for web-viewable government geographic data.

Nationally, the Canadian Council on Geomatics (CCOG) represents the single largest community of government departments and agencies closely associated with the production of government geographic data. All key provincial and territorial agencies are represented, as well as many of the federal departments and agencies with close ties to provincial and territorial activities. CCOG has been supportive of the work on harmonized licensing, and in 2003, recommended that a Work Group on Geographic Data Dissemination and Licensing be established to pursue the further advancement of these discussions. This Work Group has been established, with an early focus being given to a review of federal, provincial, and territorial policies and statutes affecting the dissemination and licensing of government geographic data. The goal is to determine the extent of agreement of these legal frameworks in order to focus on opportunities for advancement of discussion on issues for which a common approach can be pursued.

Although the mid-term plans of these working groups are still in development, the further review and refinement of the Best Practices Guide is seen as central to making progress on government geographic data dissemination objectives and licensing practices. Indeed, there is strong encouragement from both senior management and data users to continue to make progress in this direction.

Accordingly, the following steps are proposed to advance the discussions over the next several months:

- detailed review and refinement of the *Dissemination of Government Geographic Data*: *Guide to Best Practices*
- determine objectives of first round of implementation, identify issues, and develop proposed implementation strategies
- resolve first round implementation issues, select and develop detailed implementation strategy
- communicate implementation strategy
- implementation

In closing, it is imperative that as this process moves toward ever more concrete plans for implementation, that both government data producers and the users of such data are kept abreast of the status of activities, and are able to continue to provide input on the resolution of issues. This breadth of discussion will ensure that the resulting changes to government geographic data dissemination and licensing practices will be of broad benefit to all parties seeking to increase the use and value of government produced geographic data for all sectors of Canadian society.

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www.opendataconsortium.org

US Committee on Licensing Geographic Data and Services.
http://www7.nationalacademies.org/besr/Licensing.html.

Infomration on GMES, “a joint initiative of the European Commission and the European Space Agency designed to establish a European capacity for the provision and use of operational information for Global Monitoring of Environment and Security”.
http://www.gmes.info.

Appendix A
MODEL UNRESTRICTED USE LICENCE AGREEMENT FOR GOVERNMENT GEOGRAPHIC DATA

This licence agreement made as of the ____ day of _____, 200____

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
as represented by the Minister of _____ ("Licensor")

AND:

_____ ("Licensee")

WITNESSES THAT:

I **WHEREAS** the Licensor is the owner or licensee of intellectual property rights in and to digital data contained in the database known as _____ (the "Data");

II **AND WHEREAS** the Licensee wishes to obtain certain rights to the Data, in accordance with the terms and conditions herein contained;

III **AND WHEREAS** the Licensor wishes to grant to the Licensee certain rights to the Data, in accordance with the terms and conditions herein contained;

IV **AND WHEREAS** the Licensor represents that it has full authority to grant the rights desired by the Licensee on the terms and conditions herein contained;

V **AND WHEREAS** the parties hereto are desirous of entering into a licence agreement on the basis herein set forth**,**

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

1.0 DEFINITIONS

1.1 "Agreement" means this Unrestricted Use Licence Agreement and all schedules annexed to this agreement, as the same may be amended from time to time in accordance with the

provisions hereof.

1.2 "Data" means any original and fixed digital data (i.e. that it transmitted electronically), metadata, software or documentation licensed pursuant to the terms and conditions of this Agreement, described more fully in Schedule "A" attached hereto.

1.3 "Derived Products" means any product or service created from, or made functional through, the use of all or part of the Data.

1.4 "Intellectual Property Rights" means any and all intellectual property rights recognized by the law, including any intellectual property right protected through legislation.

1.5 "Licensor's Data" means that Data, the Intellectual Property Rights of which vest with the Licensor

1.6 "Licensor's Licensed Rights" means those rights conferred upon the Licensor by third parties over the use of Data which is not the Licensor's Data.

1.7 "Modifications" means any modification, enhancement, translation, update or upgrade of all or any part of the Data, in any medium.

2.0 INTELLECTUAL PROPERTY RIGHTS

2.1 All title and Intellectual Property Rights in and to the Licensor's Data shall at all times remain the property of the Licensor. All title and Intellectual Property Rights in and to the Data that is not the Licensor'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, the Licensor hereby grants to the Licensee a non-exclusive, world-wide, non-assignable right and licence to exercise such of the Licensor's Licensed Rights and such of the Licensor's Intellectual Property Rights in the Data as is necessary to use, reproduce, extract, modify, translate, further develop, distribute the Data, manufacture or cause to be manufactured and sell or license or cause to be sold or licensed Derived Products, and to sub-licence any or all of such rights, PROVIDED:

(i) all reproductions of the Data shall carry the notices and metadata information set out in section 4 hereof and the provisions contained in sections 6, to be amended in such circumstances by replacing the term "Licensor" as found in the aforementioned provisions with the Licensor's applied title or any such designation as the Licensor may indicate; and

(ii) all distribution of the Data or sell or licensing by the Licensee of Derived Products containing the Data, and any sub-licence by the Licensee of its rights hereunder, shall be evidenced in writing, be on the same terms and conditions as contained herein and shall specifically include the provisions contained in sections 4, 6 and 8.2 hereof, to be amended in the circumstances by replacing in such agreements the term "Licensor" as found in the aforementioned provisions with the Licensor's applied title or any such designation as the Licensor may indicate.

3.3 The Intellectual Property Rights arising from any Modifications or from the manufacture of Derived Products, effected by or for the Licensee, shall vest in the Licensee or in such person as the Licensee shall decide.

4.0 ACKNOWLEDGEMENT OF SOURCE AND INCORPORATION OF METADATA

4.1 The Licensee shall include the following notice where any of the Data is contained within Derived Products,

Source (or "Adapted from", if appropriate): _____ (applied title of Licensor), _____ (name of products), _____ (specific identifiers)

The incorporation of data sourced from _____ (applied title of Licensor) within this product shall not be construed as constituting an endorsement by _____ (applied title of Licensor) of such product.

or any other notice deemed appropriate by the Licensor.

4.2 The Licensee shall reproduce, include and maintain the following notice on all reproductions of the Licensor's Data produced pursuant to Section 3 above:

Reproduced with the permission of _____ (applied title of Licensor)

4.3 The Licensee shall incorporate in all reproduction and downstream distribution of the Data all metadata included by the Licensor in the provision of the Data.

5.0 FEES AND ROYALTIES

In consideration of the rights and licences granted under this Agreement, the Licensee shall pay to the Licensor the fees and/or royalties prescribed in Schedule "B" attached hereto, in the manner set out in said Schedule.

6.0 REPRESENTATIONS, WARRANTIES, INDEMNITIES

6.1 The Licensor makes no representation or warranty of any kind with respect to the accuracy,

usefulness, novelty, validity, scope, completeness or currency of the Data, at any time and from time to time, and expressly disclaims any implied warranty of merchantability or fitness for a particular purpose of the Data. The Licensor does not ensure or warrant compatibility with past, current or future versions of computer software to access the Data.

6.2 The Licensee acknowledges having received notice of the disclaimer set out above and accepts the Data on an "as is" basis, without representations or warranties of any kind. No oral or written information or advice given by the Licensor, at any time or from time to time, shall create or evidence, or be deemed to create or evidence, a contractual representation, warranty or guarantee of any kind.

6.3 The Licensee shall have no recourse against the Licensor, its officers, directors, employees, authorized agents and contractors, 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 Data or arising out of the exercise by the Licensee of its rights hereunder.

6.4 The Licensee shall indemnify the Licensor, its officers, directors, employees, authorized agents and contractors from all claims whatsoever alleging loss, costs, expenses, damages or injuries (including injuries resulting in death) arising out of the Licensee's possession or use of the Data or the exercise by the Licensee of its rights hereunder.

6.5 The Licensee's obligation to indemnify the Licensor under this Agreement shall not affect or prejudice the Licensor from exercising any other rights under law.

6.6 The provisions of this Article shall survive termination or expiration of this Agreement.

7.0 TERM

7.1 This Agreement is effective as of _____ and shall remain in effect for a period of ____ (___) year(s), subject to subsection 7.2 and section 8 below.

7.2 At the end of the first term, this Agreement shall automatically be extended for successive ____(___) year terms, subject to section 8.0 below, provided the Licensee is not then in breach of any of the terms and conditions of this Agreement.

8.0 TERMINATION

8.1 Notwithstanding section 7.0 above, this Agreement may be terminated prior to its expiration:

(i) automatically and without notice, if the Licensee commits or permits a breach of any of its covenants or obligations under this Agreement

(ii) upon written notice of termination by the Licensee at any time, and such termination shall take effect thirty (30) days after the receipt by the Licensor of such notice; or

(iii) upon mutual agreement of the parties.

8.2 Upon the expiration or termination of this Agreement, for whatever reason, the Licensee's rights under section 3 shall immediately cease; and all obligations of the Parties which expressly or by their nature survive expiration or termination shall continue in full force and effect subsequent to and notwithstanding such expiration or termination, until they are fully satisfied or by their nature expire. For greater clarity, but without restricting the generality of the foregoing, the following provisions survive expiration or termination of this Agreement:

- section 5 (fees and royalties)
- section 6 (representations, warranties, indemnities)

8.3 Notwithstanding subsections 8.1 and 8.2 above, the Licensee may continue to use the Data for the purpose of completing orders of Derived Products made before the termination date of this Agreement; provided that the Licensee shall continue to pay royalties and to fulfill its reporting obligations set out in Schedule "B" attached hereto.

8.4 Notwithstanding the expiration or termination of this Agreement, all agreements entered into by the Licensee in the exercise of its rights under section 3hereof prior to such expiration or termination and all obligations imposed therein shall continue in full force and effect subject to their terms.

9.0 GENERALITIES

9.1 Applicable Law

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

9.2 Entirety of Agreement

This Agreement and the Schedules "A" and "B" attached hereto constitute the entire agreement between the parties with respect to its subject matter. This Agreement may only be amended in writing, signed by both parties, which expressly states the intention to amend this Agreement.

9.3 Alternate Dispute Resolution

If a dispute arises concerning this Agreement, or if a proposed modification of any term of this Agreement cannot be agreed between the parties, the parties shall attempt to resolve the matter first by negotiation.

If the parties have not succeeded in negotiating a resolution, then they shall jointly submit the dispute to a mutually accepted mediator. If the parties cannot agree on an acceptable mediator, then either rparty may submit the dispute to binding arbitration.

The arbitral tribunal shall be governed by the UN Commercial Arbitration Code (the "Code"), referred to in the Commercial Arbitration Act, R.S.C 1985, c. C-4.6, and judgment upon the award rendered by the arbitral tribunal may be entered in any court having jurisdiction over the matter.

The arbitral tribunal shall consist of one arbitrator chosen by the parties.
Subject to the Code, the parties agree that the award and determination of the arbitral tribunal shall be final and binding on both parties, shall be without right of appeal and shall be the exclsuvie remedy between the parties regarding any claims, counterclaims, issues or disputes presented to the arbitral tribunal.

Costs

The Parties shall bear the costs of the mediation equally, except that each party shall bear its own personal costs of the mediation.

The costs of the arbitral tribunal's fees and expenses shall be shared equally by the aprties. The parties shall bear their own personal costs except that the losing party shall pay all costs, fees, levies and taxes arising from and necessitated by the enforcement of the arbitral tribunal's award, including, without limitation, registration, enforcement charges or other judicial levies or costs.

9.4 No Joint Venture

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 gent 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.

9.5 No Waiver

No condoning, excusing or overlooking by the Licensor 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 the Licensor in respect of any continuing or subsequent default. No waiver of these rights will be inferred from anything done or omitted by the Licensor, except by an express waiver in writing.

9.6 Order of Precedence

If there is a conflict or ambiguity between this Agreement proper and any schedules thereto, the interpretation consistent with this Agreement proper (taking into consideration the statements in the recitals and headings) shall prevail and apply, notwithstanding any wording to the contrary in the applicable schedule.

9.7 Notices

The Licensor assumes no obligation or liability whatsoever for the provision of updates to the Data or the provision of notices in relation thereto to the Licensee.

In acceptance of the foregoing, the parties have on the date set above apposed their signatures as follows:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as
represented by the Minister of _____ ,

by: _____
(signature)

_____
(printed name)

_____
(title)

LICENSEE'S FULL NAME
by: _____
(signature)

_____
(printed name and title)
Duly Authorized Signatory

SCHEDULE "A"
to the Model Unrestricted Use Licence Agreement

DESCRIPTION OF DATA

Describe data sets in sufficient detail to ensure that there will be no confusion as to the subject-matter of the licensed Data.

SCHEDULE "B "
to the Model Unrestricted Use Licence Agreement

FEES AND ROYALTIES

The Licensor may require the Licensee to pay a fee upon execution of the licence agreement. In addition, where deemed appropriate, the Licensor 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 sub-licences granted), and royalties based on the number of sub-licences actually granted. Provisions may also exist for payment of a percentage of the revenues received by the licensee from sub-licensees.

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. 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 the Licensor are of particular significance in instances where a licence is royalty-bearing. The Licensee may, for instance, be required to report to the Licensor quarterly on its net sales, etc., concurrent with periodic royalty payments and the Licensor would want to reserve the right to inspect the licensee's books to confirm the accuracy of the Licensee's reports. Monetary penalties may be imposed on the licensee where audits/verifications reveal discrepancies in excess of an agreed amount.

Reporting obligations should survive termination of the licence agreement. Typically, upon termination of a royalty-bearing licence agreement, a Licensee is required to:

1)deliver a detailed statement to the Licensor of the inventory of Derived Products then existing and not sold by the Licensee as of the date of termination;

2)(where appropriate) immediately return to the Licensor or destroy, if so instructed by the Licensor, all Technical Documentation;

3) deliver to the Licensor any royalties payable by the Licensee to the date of termination;

4) deliver a written report setting out all information reasonably required by the Licensor to ascertain that the appropriate payments have and will be made.

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 B
MODEL END-USER LICENCE AGREEMENT FOR GOVERNMENT GEOGRAPHIC DATA

This licence agreement made as of the ____ day of _____, 200____

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
as represented by the Minister of _____ ("Licensor")

AND:

_____ ("Licensee")

WITNESSES THAT:

I **WHEREAS** the Licensor is the owner or licensee of intellectual property rights in the digital data (the "Data") contained in the database known as_____;

II **AND WHEREAS** the Licensee wishes to obtain certain rights to the Data, in accordance with the terms and conditions herein contained;

III **AND WHEREAS** the Licensor wishes to grant to the Licensee certain rights to the Data, in accordance with the terms and conditions herein contained;

IV **AND WHEREAS** the Licensor represents that it has full authority to grant the rights desired by the Licensee, in accordance with the terms and conditions herein contained;

V **AND WHEREAS** the parties hereto are desirous of entering into a licence agreement on the basis herein set forth,

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

1.0 DEFINITIONS

1.1 **"Agreement**" means this end-user licence agreement and all schedules annexed to this agreement, as the same may be amended from time to time in accordance with the provisions hereof.

1.2 **"Data"** means any original and fixed digital data (i.e. that is transmitted electronically), metadata, software or documentation licensed pursuant to the terms and conditions of this Agreement, described more fully in Schedule "A" attached hereto.

1.3 **"Derived Products**" means any product or service that derives from the Data, but that does not incorporate the Data, in whole or in part.

1.4 **"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, such as that governing copyright and patents.

1.5 **"Licensor's Data"** means that Data, the Intellectual Property Rights of which vest with the Licensor.

1.6 **"Licensor's Licensed Rights"** means those rights conferred upon the Licensor by third parties over the use of Data which is not the Licensor's Data.

1.7 **"Modifications"** means any modification, enhancement, translation, update or upgrade of all or any part of the Data, in any medium.

2.0 INTELLECTUAL PROPERTY RIGHTS

2.1 All title and Intellectual Property Rights in and to the Licensor's Data shall at all times remain the property of the Licensor. All title and Intellectual Property Rights in and to the Data that is not the Licensor'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, the Licensor hereby grants to the Licensee a non-exclusive, world-wide, non-assignable right and licence to exercise such of the Licensor's Licensed Rights and such of the Licensor's Intellectual Property Rights in the Data as is necessary to use, reproduce, extract, modify, translate, further develop the Data, for the Licensee's own use, PROVIDED all reproductions, extractions, modification and translations of the Data shall carry the notices and metadata information set out in section 5 hereof and the provisions contained in sections 7, to be amended in such circumstances by replacing the term "Licensor" as found in the aforementioned provisions with the Licensor's applied title or any such designation as the Licensor may indicate.

3.2 The Licensee may also manufacture or cause to be manufactured Derived Products for further distribution, PROVIDED that these Derived Products do not contain any of the Data, in whole or in part.

3.3 The Intellectual Property Rights arising from any Modification or from the manufacture of Derived Products, effected by or for the Licensee, shall vest in the Licensee or in such person as the Licensee shall decide.

4.0 RESTRICTIONS ON USE OF THE DATA

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

(a) disassemble, decompile or in any way attempt to reverse engineer software associated with the Data; or

(b) reproduce, publish, communicate or redistribute the Data or any part thereof, to any party, for any purpose whatsoever.

4.2 Paragraph 4.1(b) shall not be construed or deemed to prohibit reproduction, publication, communication or redistribution of parts of the Data for public policy research or educational purposes, provided the source of the Data is acknowledged in all such documents or communications in the following manner:

"Source (or "Adapted from", if appropriate):____ (applied title of Licensor), _____(name of product), _____(specific identifiers, etc...)

4.3 The Licensee shall comply with any and all additional restrictions on use set out in Schedule "B" attached hereto.

5.0 PROTECTION AND ACKNOWLEDGEMENT OF SOURCE

5.1 The Licensee shall reproduce, include and maintain the following notice on all reproductions of the Data produced pursuant to section 3.1 above:

Reproduced with the permission of ___ (name of Licensor).

5.2 The Licensee shall reproduce, include and maintain on all reproductions of the Data produced pursuant to section 3 hereof all metadata that was provided by the Licensor with the Data.

6.0 FEES AND ROYALTIES

6.1 In consideration of the rights and licences granted under this Agreement, the Licensee shall pay to the Licensor the fees or royalties prescribed in Schedule "C" attached hereto, in the

manner set out in said Schedule.

7.0 REPRESENTATIONS, WARRANTIES, INDEMNITIES

7.1 The Licensor makes no representation or warranty of any kind with respect to the accuracy, usefulness, novelty, validity, scope, completeness or currency of the Data and expressly disclaims any implied warranty of merchantability or fitness for a particular purpose of the Data. The Licensor does not ensure or warrant compatibility with past, current or future versions of browsers to access the Data.

7.2 The Licensee acknowledges having received notice of the disclaimer set out above and accepts the Data on an "as is" basis, without representations or warranties of any kind. No oral or written information or advice given by the Licensor, at any time or from time to time, shall create or evidence, or be deemed to create or evidence, a contractual representation, warranty or guarantee of any kind.

7.3 The Licensee shall have no recourse against the Licensor, 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 Data or arising out of the exercise by the Licensee of its rights hereunder.

7.4 The Licensee shall indemnify the Licensor and its officers, employees and contractors from all claims whatsoever alleging loss, costs, expenses, damages or injuries (including injuries resulting in death) arising out of the Licensee 's possession or use of the Data or the exercise by the Licensee of its rights hereunder.

7.5 The Licensee 's obligation to indemnify the Licensor under this Agreement shall not affect or prejudice the Licensor from exercising any other rights under law.

7.6 The provisions of this Article shall survive termination or expiration of this Agreement.

8.0 TERM

8.1 This Agreement is effective as of _____ and shall remain in effect for a period of _____ (___) year(s), subject to subsection 8.2 and section 9 below.

8.2 At the end of the first term, this Agreement shall automatically be extended for successive ____ (___) year terms, subject to section 9 below, provided the Licensee is not then in breach of any of the terms and conditions of this Agreement.

9.0 TERMINATION

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

expiration:

(i) automatically and without notice, if the Licensee commits or permits a breach of any of its covenants or obligations under this Agreement;

(ii) upon written notice of termination by the Licensee at any time, and such termination shall take effect thirty (30) days after the receipt by the Licensor of such notice;

(iii) upon mutual agreement of the parties.

9.2 Upon the termination of this Agreement, for whatever reason:

(i) the Licensee's rights under section 3 shall immediately cease; and

(ii) the Licensee's reporting obligations contained in Schedule "C" and obligations under subsections 7.2 and 7.3 shall survive.

10. GENERALITIES

10.1 Applicable Law

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

10.2 Entire Agreement

This Agreement, together with Schedules "A","B" and "C" appended hereto, constitute the entire agreement between the parties with respect to its subject matter. This Agreement may only be amended in writing, signed by both parties, which expressly states the intention to amend this Agreement.

10.3 Alternate Dispute Resolution

If a dispute arises concerning this Agreement, or if a proposed modification of any term of this Agreement cannot be agreed between the parties, the parties shall attempt to resolve the matter first by negotiation.

If the parties have not succeeded in negotiating a resolution, then they shall jointly submit the dispute to a mutually accepted mediator. If the parties cannot agree on an acceptable mediator, then either rparty may submit the dispute to binding arbitration.

The arbitral tribunal shall be governed by the UN Commercial Arbitration Code (the "Code"), referred to in the Commercial Arbitration Act, R.S.C 1985, c. C-4.6, and judgment upon the award rendered by the arbitral tribunal may be entered in any court having

jurisdiction over the matter.

The arbitral tribunal shall consist of one arbitrator chosen by the parties.
Subject to the Code, the parties agree that the award and determination of the arbitral tribunal shall be final and binding on both parties, shall be without right of appeal and shall be the exclsuvie remedy between the parties regarding any claims, counterclaims, issues or disputes presented to the arbitral tribunal.

Costs

The Parties shall bear the costs of the mediation equally, except that each party shall bear its own personal costs of the mediation.

The costs of the arbitral tribunal's fees and expenses shall be shared equally by the aprties. The parties shall bear their own personal costs except that the losing party shall pay all costs, fees, levies and taxes arising from and necessitated by the enforcement of the arbitral tribunal's award, including, without limitation, registration, enforcement charges or other judicial levies or costs.

10.4 No Waiver

No condoning, excusing or overlooking by the Licensor 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 the Licensor in respect of any continuing or subsequent default. No waiver of these rights will be inferred from anything done or omitted by the Licensor, except by an express waiver in writing.

10.5 Order of Precedence

If there is a conflict or ambiguity between this Agreement proper and any schedules thereto, the interpretation consistent with this Agreement proper (taking into consideration the statements in the recitals and headings) shall prevail and apply, notwithstanding any wording to the contrary in the applicable schedule.

10.6 No Joint Venture

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 gent 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.

10.7 No notices

The Licensor assumes no obligation or liability whatsoever for the provision of updates to the Data or the provision of notices in relation thereto to the Licensee.

In acceptance of the foregoing, the parties have on the date set above apposed their signatures as follows:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of _____ ,

by: _____
(signature)

_____
(printed name)

_____
(title)

LICENSEE'S FULL NAME
by: _____
(signature)

_____
(printed name and title)
Duly Authorized Signatory

SCHEDULE "A"
to the Model End-User Licence Agreement

DESCRIPTION OF THE DATA

Describe data sets in sufficient detail to ensure that there will be no confusion as to the subject-matter of the licensed Data.

SCHEDULE "B"
to the Model End-User Licence Agreement

RESTRICTIONS ON USE

Licensors may want to prescribe technical restrictions such as

(TO COMPLETE)

SCHEDULE "C"
to the Model End-User Licence Agreement

FEES AND ROYALTIES

The Licensor may require the licensee to pay a fee upon execution of the licence agreement. In addition, where deemed appropriate, the Licensor 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 sub-licences granted), and royalties based on the number of sub-licences actually granted. Provisions may also exist for payment of a percentage of the revenues received by the licensee from sub-licensees.

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.

The inclusion of reporting obligations and audit/verification rights of the Licensor are of particular significance in instances where a licence is royalty-bearing. The Licensee may, for instance, be required to report to the Licensor quarterly on its net sales, etc., concurrent with periodic royalty payments and the Licensor would want to reserve the right to inspect the licensee's books to confirm the accuracy of the Licensee's reports. Monetary penalties may be imposed on the licensee where audits/verifications reveal discrepancies in excess of an agreed amount.

Reporting obligations should survive termination of the licence agreement. Typically, upon termination of a royalty-bearing licence agreement, a Licensee is required to:

1) deliver a detailed statement to the Licensor of the inventory of Derived Products then existing and not sold by the Licensee as of the date of termination;

2) (where appropriate) immediately return to the Licensor or destroy, if so instructed by the Licensor, all Technical Documentation;

3) deliver to the Licensor any royalties payable by the Licensee to the date of termination;

4) deliver a written report setting out all information reasonably required by the Licensor to ascertain that the appropriate payments have and will be made,

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 effected? By

[redacted]

cheque, wire transfer? Who are the contracting parties' representatives? How may they be contacted?

Appendix C
MODEL DISTRIBUTOR LICENCE AGREEMENT FOR GOVERNMENT GEOGRAPHIC DATA

This licence agreement made as of the ____ day of _____, 200____

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
as represented by the Minister of _____ ("Licensor")

AND:

_____ ("Distributor")

WITNESSES THAT:

I **WHEREAS** the Licensor is the owner of or licensee of intellectual property rights in the digital data (the "Data") contained in the database known as _____;

II **AND WHEREAS** the Distributor wishes to obtain certain rights to the Data, in accordance with the terms and conditions herein contained;

III **AND WHEREAS** the Licensor wishes to grant to the Distributor certain rights to the Data, in accordance with the terms and conditions herein contained;

IV **AND WHEREAS** the Licensor represents that it has full authority to grant the rights desired by the Distributor, in accordance with the terms and conditions herein;

V **AND WHEREAS** the parties hereto are desirous of entering into a licence agreement on the basis herein set forth**,**

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

1.0 DEFINITIONS

1.1 "Agreement" means this Distributor licence agreement and all schedules annexed to this agreement as the same may be amended from time to time in accordance with the provisions hereof.

1.2 "Data" means any original and fixed digital data, meta-data, software or documentation licensed pursuant to the terms and conditions of this Agreement, described more fully in Schedule "A" attached hereto.

1.3 "Derived Products" means any product, system, sub-system, device, component, material or software developed or caused to be developed by the Distributor that

incorporates or uses the Data or any part thereof.

1.4 "Intellectual Property Rights" means any and all intellectual property rights recognized by the law, including any intellectual property right protected through legislation, such as that governing copyright and patents.

1.5 "Licensor's Data" means that Data, the Intellectual Property Rights of which vest with the Licensor.

1.6 "Licensor's Licensed Rights" means those rights conferred upon the Licensor by third parties over the use of Data which is not the Licensor's Data.

1.7 "Market" means [set out the appropriate market]

1.8 "Modifications" means any modification, enhancement, translation, update or upgrade of all or any part of the Data, in any medium.

1.9 "Net Revenue" means the total revenue obtained by the Distributor, either directly or indirectly, from or related to the exercise by the Distributor of its rights under section 3 of this Agreement, less any deductions, all of which is more fully described in Schedule "B" attached hereto.

1.10 "Territory" means the geographical territory designated in Schedule "C" attached hereto.

2.0 INTELLECTUAL PROPERTY RIGHTS

2.1 All title and Intellectual Property Rights in and to the Licensor's Data shall at all times remain the property of the Licensor. All title and Intellectual Property Rights in and to the Data which is not the Licensor'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 APPOINTMENT OF DISTRIBUTOR AND LICENCE GRANT

3.1 Subject to this Agreement, the Licensor hereby appoints the Distributor and the Distributor hereby accepts such appointment, as a non-exclusive distributor of the Data, and grants to the Distributor a non-exclusive, non-transferable, non assignable right and licence to exercise such of the Licensor's Intellectual Property Rights and such of the Licensor's Licensed Rights in the Data, in the Territory, to:

(i) use and reproduce the Data for the purposes of carrying out promotion, marketing and distribution of the Data to the Market, provided any and all reproductions of the Data shall carry the caveat contained in Section 7.1 hereof;

(ii) reproduce and licence the Data to the Market, provided such licences shall be evidenced in writing, shall be on the same terms and conditions, as contained herein, and shall specifically include the provisions contained in sections 4 and 7 hereof;

(iii) use, reproduce, translate and modify the Data for the purpose of making, or causing to be made, Modifications and Derived Products; and

(iv) license to third parties such of the Data incorporated in Derived Products, provided such licences shall be evidenced in writing, shall be on the same terms and conditions as contained herein, and shall specifically include the provisions contained in sections 4 and 7 hereof.

3.2 The Intellectual Property Rights arising from any Modification or from Derived products, effected by or for the Distributor, shall vest in the Distributor or in such person as the Distributor shall decide.

4.0 PROTECTION AND ACKNOWLEDGEMENT OF SOURCE

4.1 The Distributor shall include the following notice where any of the Data is contained within Derived Products,

Source (or "Adapted from", if appropriate): _____ (applied title of Licensor), _____ (name of products), _____ (specific identifiers)

The incorporation of data sourced from _____ (applied title of Licensor) within this product shall not be construed as constituting an endorsement by _____ (applied title of Licensor) of such product.

or any other notice deemed appropriate by the Licensor.

4.2 The Distributor shall reproduce, include and maintain the following notice on all reproductions of the Licensor's Data produced pursuant to Section 3 above:

Reproduced with the permission of _____ (applied title of Licensor)

4.3 The Distributor shall reproduce, include and maintain on all reproductions of the Data produced pursuant to section 3 hereof all metadata that was provided by the Licensor with the Data.

5.0 FEES AND ROYALTIES

5.1 In consideration of the rights and licences granted under this Agreement, the Distributor shall pay to the Licensor the fees and/or royalties prescribed in Schedule "B" attached hereto, in the manner set out in said Schedule.

6.0 COVENANTS OF THE DISTRIBUTOR

6.1 The Distributor shall:

(i) 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 Data nor any portion of the Data is marketed, distributed or otherwise made available except in accordance with the terms of this Agreement;

(ii) diligently monitor and enforce any and all agreements it enters into in the exercise of its rights hereunder; and

(iii) promptly notify the Licensor of any infringements by others of the Data when such becomes known to the Distributor and where possible provide a sample of such infringement and co-operate with the Licensor in enforcing the Licensor's Intellectual Property Rights in the Data against the infringer. The Distributor shall not institute any suit or take any action or account of any such infringements without the Licensor's prior written consent.

7.0 REPRESENTATIONS, WARRANTIES, INDEMNITIES

7.1 The Licensor makes no representation or warranty of any kind with respect to the accuracy, usefulness, novelty, validity, scope, completeness or currency of the Data and expressly disclaims any implied warranty of merchantability or fitness for a particular purpose of the Data. The Licensor does not ensure or warrant compatibility with past, current or future versions of browsers to access the Data.

7.2 The Distributor represents and warrants:

(i) that it has the capacity and resources to exercise the rights herein granted to it and to fulfill its obligations under this Agreement; and

(ii) that there are no legal impediments to the carrying out of the Distributor's rights and obligations under this Agreement.

7.3 The Licensee acknowledges having received notice of the disclaimer set out above and accepts the Data on an "as is" basis, without representations or warranties of any kind. No oral or written information or advice given by the Licensor, at any time or from time to time, shall create or evidence, or be deemed to create or evidence, a contractual representation, warranty or guarantee of any kind.

7.4 The Distributor shall have no recourse against the Licensor, whether by way of any suit or action or other, for any loss, liability, damage or cost that the Distributor may suffer or incur at any time, by reason of the Distributor's possession or use of the Data, or arising out of the exercise of its rights hereunder.

7.5 The Distributor shall indemnify the Licensor and its officers, employees, agents and contractors from all claims whatsoever alleging loss, costs, expenses, damages or injuries (including injuries resulting in death) arising out of the Distributor's possession or use of the Data or the exercise by the Distributor of its rights hereunder.

7.6 The Distributor's obligation to indemnify the Licensor under this Agreement shall not affect or prejudice the Licensor from exercising any other rights under law.

7.7 The provisions of this Article shall survive termination of this Agreement.

8.0 TERM

8.1 This Agreement is effective as of _____ and shall remain in effect for a period of ____ (___) year(s), subject to subsection 8.2 and section 9.0 below.

8.2 At the end of the first term, this Agreement shall automatically be extended for successive ____(___) year terms, subject to section 9.0 below, provided the Distributor is not then in breach of any of the terms and conditions of this Agreement.

9.0 TERMINATION

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

(i) automatically and without notice, if the Distributor commits or permits a breach of any of its covenants or obligations under this Agreement;

(ii) upon written notice of termination by the Distributor at any time, and such termination shall take effect thirty (30) days after the receipt by the Licensor of such notice; or

(iii) upon mutual agreement of the parties.

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

(i) the Distributor's appointment and rights under section 3 shall immediately cease; and

(ii) the Distributor' reporting obligations contained in Schedule "B" and obligations in subsections 7.4 and 7.5 shall survive.

9.3 Notwithstanding subsection 9.2 above, the Distributor may continue to use the Data for the purpose of completing orders of Derived Products made before the termination date of this Agreement; provided that the Distributor shall continue to pay fees and/or royalties, comply with the requirements in section 4 hereof, and 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 Distributor 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.

10.0 GENERALITIES

10.1 Applicable Law

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

10.2 Entire Agreement

This Agreement, together with Schedules "A","B" and "C" appended hereto, constitute the entire agreement between the parties with respect to its subject matter. This Agreement may only be amended in writing, signed by both parties, which expressly states the intention to amend this Agreement.

10.3 Alternate Dispute Resolution

If a dispute arises concerning this Agreement, or if a proposed modification of any term of this Agreement cannot be agreed between the parties, the parties shall attempt to resolve the matter first by negotiation.

If the parties have not succeeded in negotiating a resolution, then they shall jointly submit the dispute to a mutually accepted mediator. If the parties cannot agree on an acceptable mediator, then either rparty may submit the dispute to binding arbitration.

The arbitral tribunal shall be governed by the UN Commercial Arbitration Code (the "Code"), referred to in the Commercial Arbitration Act, R.S.C 1985, c. C-4.6, and judgment upon the award rendered by the arbitral tribunal may be entered in any court having jurisdiction over the matter.

The arbitral tribunal shall consist of one arbitrator chosen by the parties.
Subject to the Code, the parties agree that the award and determination of the arbitral tribunal shall be final and binding on both parties, shall be without right of appeal and shall be the exclsuvie remedy between the parties regarding any claims, counterclaims, issues or disputes presented to the arbitral tribunal.

Costs

The Parties shall bear the costs of the mediation equally, except that each party shall bear its own personal costs of the mediation.

The costs of the arbitral tribunal's fees and expenses shall be shared equally by the aprties. The parties shall bear their own personal costs except that the losing party shall pay all costs, fees, levies and taxes arising from and necessitated by the enforcement of the arbitral tribunal's award, including, without limitation, registration, enforcement charges or other judicial levies or costs.

10.4 No Waiver

No condoning, excusing or overlooking by the Licensor 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 the Licensor in respect of any continuing or subsequent default. No waiver of these rights will be inferred from anything done or omitted by the Licensor, except by an express waiver in writing.

10.5 Order of Precedence

If there is a conflict or ambiguity between this Agreement proper and any schedules thereto, the interpretation consistent with this Agreement proper (taking into consideration the statements in the recitals and headings) shall prevail and apply, notwithstanding any wording to the contrary in the applicable schedule.

10.6 No Joint Venture

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 gent 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.

10.7 No notices

The Licensor assumes no obligation or liability whatsoever for the provision of updates to the Data or the provision of notices in relation thereto to the Licensee.

In acceptance of the foregoing, the parties have on the date set above apposed their signatures as follows:

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

by: _____
(signature)

_____
(printed name)

_____
(title)

DISTRIBUTOR'S FULL NAME

by: _____
(signature)

_____
(printed name and title)
Duly Authorized Signatory

SCHEDULE "A"
to the Model Distributor Licence Agreement

DESCRIPTION OF DATA

Describe data sets in sufficient detail to ensure that there will be no confusion as to the subject-matter of the licensed Data.

SCHEDULE "B "
to the Model Distributor Licence Agreement

FEES AND ROYALTIES

The Licensor may require the Distributor to pay a fee upon execution of the licence agreement. In addition, where deemed appropriate, the Licensor 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 sub-licences granted), and royalties based on the number of sub-licences actually granted. Provisions may also exist for payment of a percentage of the revenues received by the Distributor from sub-Distributors.

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.

The inclusion of reporting obligations and audit/verification rights of the Licensor are of particular significance in instances where a licence is royalty-bearing. The Distributor may, for instance, be required to report to the Licensor quarterly on its net sales, etc., concurrent with periodic royalty payments and the Licensor would want to reserve the right to inspect the Distributor's books to confirm the accuracy of the Distributor's reports. Monetary penalties may be imposed on the Distributor where audits/verifications reveal discrepancies in excess of an agreed amount.

Reporting obligations should survive termination of the licence agreement. Typically, upon termination of a royalty-bearing licence agreement, a Distributor is required to:

- deliver a detailed statement to the Licensor of the inventory of Derived Products then existing and not sold by the Distributor as of the date of termination;

- (where appropriate) immediately return to the Licensor or destroy, if so instructed by the Licensor, all Technical Documentation;

- deliver to the Licensor any royalties payable by the Distributor to the date of termination;

- deliver a written report setting out all information reasonably required by the Licensor to ascertain that the appropriate payments have and will be made.

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 effected? By cheque, wire transfer? Who are the contracting parties' representatives?

SCHEDULE "C"
to the Model Distributor Licence Agreement

TERRITORY

Appendix D

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.

Proposed Change:
Please describe any proposed changes to the Guide in order to address the Issue or Problem defined above.