

**CANADIAN HYDROGRAPHIC SERVICE
VALUE-ADDED RESELLER AGREEMENT FOR PAPER VAR PRODUCTS**

This is Canadian Hydrographic Service Paper Value-Added Reseller Agreement no. **yyyy-mmdd-1260-x**, effective as of the date provided in clause 9.1 below.

between

His Majesty the King in right of Canada,
as represented by the Minister of the Department of Fisheries and Oceans,
and acting through the Canadian Hydrographic Service,
200 Kent Street, Ottawa, Ontario K1A 0E6
("the Crown")

and

legal name of corporation, partnership or individual,
a corporation incorporated under the laws of xxx,
with head office located at street address, city, province postal code
and its successors

(collectively the "Licensee")

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

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

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

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

NOW THEREFORE, the Parties agree as follows:



1.0 DEFINITIONS

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

“CHS” means the Canadian Hydrographic Service.

“CHS Data and Products” means the paper and digital data and products produced by or for CHS, set out in Schedule “A” attached hereto, as amended from time to time in the Crown's sole discretion. CHS Data and Products may contain Crown Data, and include related documentation provided by CHS to the Licensee pursuant to the terms and conditions of this Agreement. The CHS Data and Products available for licence at any given time are listed at www.charts.gc.ca. The CHS Data and Products which the Licensee has requested are set out in Schedule “D” attached hereto. The CHS Data and Products which the Licensee has licensed are set out in Schedule “E” attached hereto. CHS may in its sole discretion cancel or replace any CHS Data or Product, as provided in clause 5.3 below.

“CHS Data and Products Updates” means updates to CHS Data and Products which may consist of a new chart, a new edition of a chart, or an electronic file, in CHS’s sole discretion. If the Licensee wishes to licence additional CHS Data and Products, or new charts produced by CHS outside the geographic area of licensed CHS Data and Products, the Licensee can request an amendment to this Agreement which will be attached in Schedule “F” hereto.

“Content Ratio” means the percentage of the Paper VAR Product consisting of CHS Data and Products.

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

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

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

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

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

“Party” means either one of the signatories and includes their respective servants, agents, and employees.

“Paper VAR” means the Licensee.



“Paper VAR Products and Updates” means any paper or analogue material, product, device, component, material or update developed or manufactured, or caused to be developed or manufactured, by the Licensee in the exercise of its rights hereunder. Such Paper VAR Products and Updates are required to contain significant value-added data content, as reasonably determined by CHS. Such Paper VAR Products and Updates are not intended to be used to replace official products for navigation but may be developed or manufactured, as a supplement to official government charts, by constructing, deriving, developing, adapting, incorporating or by any other means using the CHS Data and Products and/or the CHS Data and Product Updates, in whole or any part thereof. It shall be within the Licensee's discretion whether or not to supply Paper VAR Updates to its end users.

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

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

“Value-Added Reseller” (“VAR”) means the Licensee. The VAR has the right to use the CHS Data and Products to update existing products or develop new paper products. The VAR has no right to permit or grant sublicences to anyone else to reproduce or distribute the CHS Data or Products, or use the CHS Data or Products to update or develop products.

2.0 GRANT OF LICENCE

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

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

(b) reproducing and distributing on a wholesale or retail basis Paper VAR Products and Updates containing CHS Data and Products.

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

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

2.4 The Licensee shall not permit or grant sublicences to anyone else to reproduce or distribute the CHS Data or Products, or use the CHS Data or Products to update or develop products.



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

2.6 This licence is valid for the Paper VAR Products and Updates specified in the Application Form signed and attached as Schedule “D” to this Agreement.

3.0 INTELLECTUAL PROPERTY

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

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

3.3 Subject to clause 3.1 and 3.2 above, and without affecting the Crown's Intellectual Property Rights in the CHS Data and Products and the CHS Data and Product Updates, and any third party's Intellectual Property Rights in Data contained in the CHS Data and Products and/or the CHS Data and Product Updates, all title and Intellectual Property Rights in and to Paper VAR Products and Updates shall vest in the Licensee or in such person as the Licensee shall decide.

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

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

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



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

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

4.0 ROYALTIES

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

5.0 PROVISION OF CHS DATA AND PRODUCTS

5.1 CHS will post a list of CHS Data and Products and CHS Data and Products Updates on the CHS website at www.charts.gc.ca. CHS will provide the Licensee with the CHS Data and Products, either by delivering them to the Licensee, or by providing the Licensee with electronic access to them. CHS assumes no liability for failure to provide CHS Data and Products or CHS Data and Products Updates, or notices of Products or Updates, to the Licensee.

5.2 CHS shall have the sole discretion to determine whether a particular product is considered a CHS Data and Products Update or a new CHS Product. CHS assumes no obligation for the provision of new Products, or liability for the failure to provide new Products, or notices in relation thereto, to the Licensee.

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

5.4 The Licensee will only distribute the most recent edition of the Paper VAR Product to End Users, and will provide End Users with the most recent version of Paper VAR Product Updates as soon as reasonably possible.

6.0 VAR PRODUCTS AND VAR PRODUCT UPDATES

6.1 The Licensee shall within thirty days of the development and/or manufacture of any and all Paper VAR Products and Updates, and prior to their distribution, provide to CHS, at no cost to it, two (2) sample copies of Paper VAR Products and Updates, in English and French where applicable. The Parties agree that the two (2) sample copies will only be required where the Licensee is producing a new VAR Product, for example, when the VAR Product contains substantial changes such as changes to



coverage, scale, layout and the use of CHS data will require the provision of samples to CHS. Sample copies are not required for a reprint which simply updates existing content, such as incorporating Notices to Mariners.

6.2 Upon provision of the sample copies, CHS will make a determination as to whether the Paper VAR Products and Updates unreasonably compete with the Crown's own products, in which case the Licensee will promptly effect, at its own cost, all modifications to the Paper VAR Products and Updates, as the case may be, deemed necessary by CHS, acting reasonably.

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

7.0 REPORTS

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

8.0 MARKETING

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

8.2 The Licensee shall, prior to use, supply CHS for approval, a copy of all marketing and promotional literature that in any way relates to CHS Data and Products or the relationship between CHS and the Licensee. CHS shall inform the Licensee of any required changes within five (5) days of receipt. Failure by CHS to inform the Licensee of any required changes within five (5) days of receipt shall constitute approval of such marketing and promotional literature. The Licensee shall make, at its expense, all changes reasonably required by CHS.

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

9.0 TERM, AND OPTIONAL EXTENSION

9.1 This Agreement is effective as of **dd-Mmm-yyyy** when signed by both Parties, and shall remain in effect for three (3) years, subject to clause 10.0 below.

However, in exceptional circumstances, provided the Licensee has not been in breach of any terms or conditions of this Agreement, the Licensee may request an extension, such request to be made in writing sixty (60) days before the expiration of this Licence, and CHS in its sole discretion may extend this Agreement for an additional one (1) year period.



10.0 TERMINATION

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

(a) if the Licensee commits or permits a breach of any material covenant or obligation under this Agreement, and fails to remedy such breach within 30 days of being notified in writing of such alleged breach by CHS to the reasonable satisfaction of CHS;

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

(c) upon mutual written agreement of the Parties.

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

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

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

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

(iii) shall deliver a detailed statement to CHS of the inventory of Paper VAR Products and Updates then existing and not sold by the Licensee as of the date of expiration or termination, and shall sell or destroy such inventory within 90 days from expiration or termination, unless this licence is renewed;

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

(A) continue to pay royalties as required by clause 4 and Schedule "A";

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

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

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



(vi) shall return or destroy, at its expense, as CHS shall instruct, no later than ninety (90) days thereafter, all Crown intellectual property, other reproduced material, documentation, technical information and any other data supplied to the Licensee during the continuance of this Agreement and all and any copies made of the whole or any part of the same; and the Licensee shall furnish CHS with a certificate certifying that the same has been done; and

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

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

- (i) clause 4 (Royalties)
- (ii) clause 7 (Reports)
- (iii) clause 10 (Termination)
- (iv) clause 11 (Protection and Acknowledgement of Source)
- (v) clause 17 (Confidentiality)
- (vi) clause 24 (Records and Audits)
- (vii) clause 25 (Representations, Warranties and Indemnities).

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

11.0 PROTECTION AND ACKNOWLEDGEMENT OF SOURCE

11.1 Where any of the CHS Data and Products is contained within the Paper VAR Products or Updates, the Licensee shall include in a prominent location on said Paper VAR Products and Updates the following notice:

This product has been produced by [insert Licensee name] based on Canadian Hydrographic Service (“CHS”) data, following any minimum standards/guidelines that may have been established by CHS, pursuant to CHS Value-Added Reseller Agreement **yyyy-mmdd-1260-x**. This product does not meet the requirements of the *Navigation Safety Regulations, 2020* under the *Canada Shipping Act, 2001*. Official charts and publications, issued by or on the authority of CHS must be used to meet the requirements of those regulations. CHS does not endorse any derived product.

or any other notice approved in writing in advance by CHS.

Every page of a VAR Product or Update that contains CHS Data and Products shall also include the following notice:

NOT TO BE USED FOR NAVIGATION – see page x for explanatory note. For navigation, use Canadian Hydrographic Service chart number xxxx.



11.2 The Licensee shall make no representation that the use of the Paper VAR Products and Updates removes any obligations under the *Navigation Safety Regulations, 2020* made pursuant to the *Canada Shipping Act, 2001*. Any statement or inference that the Paper VAR Products and Updates are intended to be used for any navigation purpose shall be accompanied by a reference to clause 11.1.

11.3 Unless with the prior written consent of CHS, the Licensee shall ensure that no acknowledgement of the Crown except as set out in clause 11.1 above shall be shown in association with any form of promotion or advertisement, and the Licensee shall not include in its promotional materials or in the Licensee's Paper VAR Products or Updates:

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

(b) the chart name used in the original CHS chart; or

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

12.0 BAR SCALES AND CAUTION NOTES

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

13.0 END USER LICENSING AND SUPPORT

13.1 The Licensee, and not CHS, shall provide any End User support, including any Paper VAR Product Updates, in the Licensee's discretion.

13.2 The Licensee shall not permit or grant sublicences to an End User to reproduce or distribute the CHS Data or Products, or use the CHS Data or Products to update or develop products.

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

GENERAL

14.0 Applicable Law

14.1 This Agreement shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws of the province in which the head office of the Licensee is located, and of Canada; or if the head office of the Licensee is not located in Canada, then by the laws of Ontario and of Canada.



15.0 Assignment

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

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

16.0 Benefits Arising from Agreement

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

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

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

17.0 Confidentiality

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

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

17.3 Subject to clause 17.4 below, any information provided by one Party to another shall be treated as confidential if clearly marked as confidential. Each Party (the "First Party") agrees not to disclose any confidential information of the other Party (the "Other Party") unless:

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



(e) the First Party has a legal obligation to disclose the information.

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

18.0 Dispute Resolution

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

19.0 Due Diligence

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

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

20.0 Entirety of Agreement

20.1 This Agreement including the recitals and Schedules "A", "B" "C", "D", "E" and "F" attached hereto and incorporated herein constitute the entire agreement between the Parties with respect to its subject matter and supersedes any prior agreements or communications of any kind between the Parties. This Agreement may only be amended in writing, signed by both Parties, which expressly states the intention to amend this Agreement.

21.0 Language of Agreement

21.1 The Agreement is written in English at the request of the Licensee; le présente accord est rédigé en anglais à la demande du titulaire de licence.

22.0 Licensee Not an Agent, Partner or Representative

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

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



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

23.0 Notices

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

In the case of the Crown or CHS:

Canadian Hydrographic Service,
200 Kent Street,
Ottawa, Ontario K1A 0E6
Attn: Intellectual Property and Licensing
Email: CHSInfo@dfo-mpo.gc.ca

And in the case of the Licensee, to:

Licensee name
Address
Address
Country
Email:
Attn:

23.2 Any such notice or communication:

- a) if delivered personally or by courier, is deemed to have been given when actually received, and
- b) if transmitted by fax or email, is deemed to have been given on the Business Day after the date of transmission.

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

24.0 Records and Audits

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



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

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

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

24.5 The provisions of this clause 24 shall continue in full force and effect for a period of two (2) years following expiration or termination of this Agreement.

25.0 Representations, Warranties and Indemnities

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

25.2 The Licensee shall have no recourse against the Crown, whether by way of any suit or action or other, for any loss, liability, damage or cost that the Licensee may suffer or incur at any time, by reason of the Licensee's possession or use of the CHS Data and Products and/or CHS Data and Product Updates, or arising out of the exercise of its rights hereunder, except that Crown does not limit or exclude its liability upon a court's finding of liability attaching to the Crown for death or personal injury caused by the negligence of its employees, agents or contractors, provided the death or personal injury arose out of the navigational use of the licensed CHS Data and Products.

25.3 Except as described in clause 25.2 above, the Crown's total liability to the Licensee, whether directly to it or by reason of indemnity or contribution in respect of the Licensee's liability to any third party, or any acts or omissions of the Crown's employees, agents or contractors shall be limited to the sum of all licence royalties due to the Crown in accordance with clause 4.1 and Schedule "A", during the term of this Agreement. This limit of liability shall apply separately to each and every claim against the Crown provided that where any act or omission or series of two or more acts or omissions give rise to more than one claim, the limits shall apply to the aggregate of all claims as though they were a single claim.

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

- a) the Licensee's loss of profits, revenues or goodwill or loss of anticipated savings or gains;



b) any indirect or consequential loss even if the loss or damages were reasonably foreseeable or the Crown had been advised by the Licensee of the possibility of it being incurred and whether arising from negligence, breach of contract or of statutory duty or otherwise; or

c) any claim which has not been notified to the Crown within sixty (60) days of the date on which the Licensee knew, or should have reasonably known of the existence of grounds for such claim.

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

25.6 The Licensee represents and warrants:

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

(b) that there are no legal impediments to the carrying out of the Licensee's rights and obligations under this Agreement; and

(c) it is a duly incorporated, validly subsisting corporation in good standing under the laws of the applicable jurisdiction listed above.

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

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



26.0 Security Procedures

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

27.0 Waiver

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

28.0 Safety and Quality Control Issues

28.1 The Licensee agrees that it will:

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

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

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

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

29.0 Order of Precedence

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



30.0 Severance

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

His Majesty the King in right of Canada, as represented by the Minister of the Department of Fisheries and Oceans, acting through the Canadian Hydrographic Service:

by: _____
(signature and date)

Director General, Canadian Hydrographic Service and
Hydrographer General of Canada
(title)

Authorized Signing Authority on behalf of the Licensee:

by: _____
(signature)
I have the authority to bind the corporation

(printed name)

(title)

(date)



SCHEDULE “A”**ROYALTIES**

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

Access Royalties

Access Royalties payable are as follows:

- \$300 CDN per licence term (BSB raster charts, S-57 vector charts, Tide and Current Products and/or Data, Sailing Directions Data and/or Products);
- Multibeam Data and/or Products: an access royalty as set out in the Multibeam Royalty Matrix listed on www.charts.gc.ca, as amended from time to time;
- CHS Source Hydrographic/Field data: an access royalty of \$75CDN per sheet per licence term;

plus any applicable shipping, handling and taxes.

Access Royalties will be payable once per licence term, in advance of receiving CHS Data and Products.

Sales Royalties

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

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

Sales Royalties = Net Revenue x Content Ratio x 18%

Sales Royalties to the Crown will be calculated quarterly, at the end of the quarter, based on Net Revenue earned (not revenue received) by the Licensee during the quarter from sales of the VAR Products and VAR Product Updates. The Licensee shall provide a quarterly Sales Report to CHS in accordance with Schedule “B” below.

Sales royalties are payable quarterly, 15 days following the end of each calendar quarter, and shall be accompanied by the Licensee’s quarterly sales report. This Agreement shall be deemed as sufficient invoice for the purpose of access and sales royalty payments, shipping, handling and taxes.

The Licensee shall pay any applicable shipping, handling and taxes.



General Provisions with Regard to Royalties

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

Canadian Hydrographic Service
200 Kent Street
Ottawa, Ontario K1A 0E6
Attn: Intellectual Property and Licensing

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

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

Bank Name:	Fédération des caisses Desjardins du Québec 1 Complexe Desjardins, South Tower, 15th floor, Montreal QC Canada H5B 1B3
SWIFT:	CCDQCAMM
Bank Number:	815
Transit Number:	98000
Beneficiary Name:	086-25672 - DFO
Beneficiary Account No:	MFI09707490815CAD6
Charges Field:	“OUR”
Description Field:	Name of Licensee’s company, this Agreement number, and date.

Note that the wire standards used in Canada provide four lines of description fields, each with a maximum of 35 characters.

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

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

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



Danish Charts

The following charts contain Canadian and third-party content. Sales Royalties shall be paid to CHS as set out in the following tables. The Licensee is responsible for reporting known applicable content in the Licensee's product to third-party copyright holders. Amounts for royalties owing for third party content shall be referred to the third-parties by the Licensee.

Danish charts containing Canadian data:

Chart	Title	Denmark Content (%)	Canada Content (%)	Other Content (%)
DK1001	Kap Poul Sørensen - Kap Farvel – Godthåb	84	16	0
DK1400	Hamborgerland – Rifkol	77	23	0
DK1500	Rifkol – Hareø	98	2	0
DK1700	Prøven - Holms Ø	95	5	0
DK3200	Kap York - Kap Chalon	56	44	0

CHS will not charge access royalties on the Danish charts. Sales royalties only.

Canadian charts containing Danish data:

Chart	Title	Denmark Content (%)	Canada Content (%)	Other Content (%)
4000	Gulf of Maine to/à Baffin Bay/Baie de Baffin	27	73	0
4700	Belle Isle to/à Resolution Island	1	99	0
5001	Labrador Sea/Mer du Labrador	47	53	0
7010	Davis Strait and/et Baie de Baffin	43	55	2 (Iceland)
7011	Hudson Strait/Détroit D'Hudson to/à Groenland	46	54	0
7071	Cape Norton Shaw to Cape M'Clintock	49	51	0
7072	Kane Basin to Lincoln Sea	43	57	0
7220	Lancaster Sound, Eastern Approaches/Approches Est	9	91	0
7302	Lady Ann Strait to Smith Sound	49	51	0
7304	Lincoln Sea	79	21	0



SCHEDULE “B”

REPORTING REQUIREMENTS

Sales Reports

Each royalty payment shall be accompanied by a Sales Report for the calendar quarter, which shall be in Excel format and will include the following information:

- the total number of units of each VAR Product and VAR Product Update sold during the quarter;
- the Content Ratio for each unit;
- Net Revenue (Gross Revenue - Value of Applicable Returns - Value of Channel Discounts) x Content Ratio x 18%
- the total Sales Royalties payable to the Crown for the sales of VAR Products and VAR Product Updates during the quarter; and
- the actual selling price for each Paper VAR Product and Update sold during the quarter.

Any information contained in a sales report marked “confidential” will be kept confidential by CHS.

Licensee's Financial Statements

CHS reserves the right to require the Licensee to provide CHS, within ninety (90) days following the end of the Licensee's fiscal year, with a copy of its audited financial statements, or an audited statement of its revenues from the sale of CHS Data and Products.

Any information contained in the licensee's financial or revenue statements marked “confidential” will be kept confidential by CHS.

Inspection of Books

CHS reserves the right to inspect (or to appoint accounting experts to inspect) the Licensee’s books to confirm the accuracy of the Licensee’s Sales Reports at any time during the term of this Licence and for two years afterwards; provided, that such inspection is conducted in all respects in accordance with clause 24.



SCHEDULE “C”

LICENSEE'S END USER LICENCE AGREEMENT (IF APPLICABLE)

Copy of Licensee's End User Licence Agreement to be attached here, if applicable.



SCHEDULE “D”

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



SCHEDULE “E”**DESCRIPTION OF LICENSED CHS DATA AND PRODUCTS**

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

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



SCHEDULE “F” Amendment No. _____

This Schedule replaces Schedule E and any previous Schedule “F”s in Canadian Hydrographic Service Paper Value-Added Reseller Agreement no. yyyy-mmdd-1260-x.

In this Schedule:

- 1) the following CHS Data and Products have been added:
 - *insert list of new data and products*
- 2) the following CHS Data and Products have been replaced:
 - *insert list of old data and products which have been replaced, together with list of replacements*
- 3) the following CHS Data and Products have been cancelled:
 - *insert list of data and products which have been cancelled:*
- 4) the following is a complete list of licensed CHS Data and Products as of the date of this Amendment to Schedule “E”:
 - *insert consolidated revised list of licensed CHS Data and Products:*

**** to be signed only when this Annex F is completed ****

