



INSPIRE

Infrastructure for Spatial Information in Europe

# Guidance on the 'Regulation on access to spatial data sets and services of the Member States by Community institutions and bodies under harmonised conditions'

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These are Dublin Core metadata elements. See for more details and examples <http://www.dublincore.org/>.

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#### Disclaimer:

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## 1 Introduction

This Guidance has been drafted to assist Member States and their public authorities as well as the Community institutions and bodies in complying with or applying the 'Commission Regulation (EU) No 268/2010 of 29 March 2010 implementing Directive 2007/2/EC of the European Parliament and of the Council as regards the access to spatial data sets and services of the Member States by Community institutions and bodies under harmonised conditions<sup>1</sup>' hereafter referred to shortly as 'the Regulation' or "the Regulation on Data and Service Sharing". The purpose of the Regulation is to establish harmonised conditions of access to spatial data sets and services for the institutions and bodies of the European Community. The general obligation for Member States to provide the institutions and bodies of the Community with access to spatial data sets and services is already given by Article 17 of the Directive 2007/2/EC and entered into force with the entry into force of the Directive, independently of the adoption of the Regulation.

As stated in the Directive, the Regulation amends the non-essential elements of Directive 2007/2/EC, by supplementing it. Therefore the Regulation only addresses access to data and services, as anything pertaining to the actual use of data and services is regulated by the Directive itself.

Therefore this Guidance document in its main part concentrates on access to spatial data sets and services and provides guidance and information about the provisions of the Regulation, in order to clarify the scope, meaning and background of these provisions. This should facilitate Member States and the public authorities as well as the Community institutions and bodies in applying the Regulation. In order to provide a complete picture on sharing of spatial data sets and services in a second part the Guidance document provides further advice and guidelines which can help the Member States to create a harmonised approach to the provision of spatial data sets and services to the institution and bodies of the Community.

While these guidelines are not mandatory, their content provides what may be considered to be good practice, whose adoption could significantly support the harmonisation and the interoperability of the conditions of access for the Community bodies and institutions. A separate Good Practice document includes examples of data and service sharing practices that can improve sharing according to Article 17 within and between the Member States<sup>2</sup>.

Sharing agreements can assume different forms, e.g. e-mail, licence statement on a webpage, a click licence, a service level agreement or a licence agreement signed by all the parties involved. Whatever form the agreement takes it is legally binding definition of the conditions of use of the related spatial data sets and services. Often these agreements are formalised in form of a licence (for spatial data sets) or in form of a service level agreement (for services), as this allows to clearly specify all relevant rights and obligations.

The Guidance includes INSPIRE agreements which can be used by the Member States or public authorities within the context of INSPIRE, although using them is not compulsory. The use of these INSPIRE Agreements allows a higher level of harmonisation to be reached.

Since the same conditions applies to Member States and their bodies, these agreements can be used as templates for INSPIRE use between bodies in and outside a Member State.

The Guidance also provides key concepts for INSPIRE Framework Agreements, which are recommended for all those cases where a formal agreement is needed, especially where the

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<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:083:0008:0009:EN:PDF>

<sup>2</sup>

[http://inspire.jrc.ec.europa.eu/documents/Data\\_and\\_Service\\_Sharing/GoodPractice\\_%20DataService%20Sharing\\_v2.pdf](http://inspire.jrc.ec.europa.eu/documents/Data_and_Service_Sharing/GoodPractice_%20DataService%20Sharing_v2.pdf)

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contract includes two or more partners and/or covers the conditions for access and use of one or more data sets and services.

Although INSPIRE Directive only applies to Member States and the Regulation concerns the access to spatial data sets and services of the Member States by Community institutions and bodies under harmonised conditions, the European Commission has declared its intention to adopt a similar practice (INSPIRE) with regard to their own spatial data (see Communication from the Commission to the European Parliament COM(2006)51). The guidance provided in this document might therefore be useful also for Community institutions and bodies.

## 2 Guidance to the Regulation on Data and Service Sharing

### 2.1 Article 1: Subject matter

#### 2.1.1 Terminology

The Regulation establishes harmonised conditions of access by the institutions and bodies of the Community to spatial data sets and services of the Member States and their public authorities, in accordance with Article 17 of the Directive. The following terms that are used require further explanation.

- **Institutions and bodies of the Community**

The institutions and bodies of the Community are defined in the EC Treaty and in other legislation, e.g. Regulation (EC) No.45/2001. The institutions of the Community can be found in Article 7 of the EC Treaty. There are five: the European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors<sup>3</sup>.

The changes introduced by the Lisbon Treaty have not been integrated in the current version of the guidelines in order to be consistent with the terminology used in this Regulation, drafted before the new Treaty entered into force.

The list of institutions and bodies can be found under [http://europa.eu/institutions/index\\_en.htm](http://europa.eu/institutions/index_en.htm). This list includes a list of agencies ([http://europa.eu/agencies/community\\_agencies/index\\_en.htm](http://europa.eu/agencies/community_agencies/index_en.htm)). It is an evolving list, as new agencies may be created or closed in the future.

Agencies under the 2nd and 3rd pillars are not covered by the term “institutions and bodies of the Community”, therefore they do not fall under INSPIRE Directive.

European Topic Centres do not fall under the definition of “institutions and bodies of the Community”; however when acting as contractors to Community institutions and bodies they may have access to the data and services under the terms specified in the Regulation (Article 4.1).

- **Definitions from the Directive**

The Regulation (Preamble 4 and Article 3) specifically refers to article 3 of the Directive for the relevant definitions that have to be used in arrangements concerning access to spatial data sets and services. Terms defined in the Directive and relevant to the Regulation include ‘spatial data set’, ‘spatial data service’, ‘public authority’ and ‘third party’.

- **Public task of an institution or body of the Community**

The Commission 'public task' falls into 3 categories:

- Commission right of initiative for making proposals for legislation,

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<sup>3</sup> The Lisbon Treaty introduced 2 more institutions: European Council, European Central Bank.

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- Commission as 'guardian of the treaties' - which implies ensuring that EU legislation is applied correctly in the Member States,
- Commission as executive body, responsible for implementing and managing policy.

The public task of the other Community institutions and bodies are specific to each body and are determined in the legal acts which created them and/or described their role.

## 2.1.2 Scope of the Regulation

### • Relevant data sets and services

The Regulation covers the access to spatial data sets and services which fulfil all of the following conditions stated in the Directive:

- They relate to an area where a Member State has or exercises jurisdictional rights; and
- They are in electronic format; and
- They are held by or on behalf of a public authority, having been produced or received by a public authority, or being managed or updated by that authority and falling within the scope of its public tasks; and
- They relate to one or more of the themes listed in Annex I, II or III of the Directive.

In addition, this must be checked out:

- If they are held by or on behalf of a public authority operating at the lowest level of government, they fall under INSPIRE only if the spatial data sets and services have been created to comply with a law or regulation requiring their collection or dissemination. This is in reference to Article 4(6) which gives derogation for public authorities at the lowest level of government where their datasets have not been collected in order to comply with a law or regulation requiring their collection or dissemination.
- If they contain third party intellectual property rights it is necessary that the consent of the third party has been given.

All themes listed in Annexes I, II and III of the INSPIRE Directive are covered by the obligation to share according to article 17 from the day the INSPIRE Directive came into force (15 May 2007). From that date onwards the sharing must abide by the rules for access in INSPIRE Directive. This means that the sharing obligation for data sets and services exists independently of the related INSPIRE data specification still to be developed.

Where data falling within the scope of one of the Directive themes is held in multiple ownership – by several Member States or by several public authorities within one Member State – it is still within the scope of the Regulation, and the joint owners will need to cooperate to determine how to provide the data to the Community institutions and bodies.

The data within the scope of the Regulation includes old, archived or superseded datasets where they meet the criteria listed under scope. However, there is no obligation through the INSPIRE legislation to maintain archives; the same way as there is no obligation to establish new datasets. But if datasets under the scope exist, they are covered by the obligation to share.

Note that the scope includes not just the datasets, but any spatial data services relating to those datasets.

### • Relevant tasks

The Regulation applies to access to spatial data sets and services for the institutions and bodies of the Community for the performance of their public tasks that may have an impact on the environment.

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Access under INSPIRE Directive applies only when and if the institution or body of the Community states that it requires the data sets or services to be shared under the harmonised conditions of INSPIRE Directive. The Community institutions and bodies have the freedom to use other arrangements.

## **2.2 Article 2: Restrictions on access**

In accordance with Article 17(7) of INSPIRE Directive, Member States and their public authorities may limit the sharing of spatial data sets and services when this would compromise the course of justice, public security, national defence or international relations. Clarification for any such restriction shall be provided by the Member State or the public authority in question if requested by a Community institution or body. This is included in Article 2 of the Regulation. The clarification on the restriction, which is only given when requested, should identify at least which of the legitimate reasons for restriction applies, and, if possible, further clarification. Restrictions may also apply due to other European legislation. Examples are the PSI Directive and the Aarhus Directive. National legislation exists within the framework set by Community legislation and the INSPIRE Directive states that sharing arrangements made under Article 17 of the INSPIRE Directive may be accompanied by requirements under national law conditioning their use. An example could be when a sensitive dataset is compiled for a specific purpose and therefore cannot be used freely for other purposes (art. 6 of the Directive 95/46/EC on the processing of personal data). The community institution or body must also process any data containing personal information in accordance with Regulation 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the Community and on the free movement of such data (OJ L 8, 12 January 2001). This guidance is primarily intended to explain the Sharing Regulation, this does not exclude the fact that other relevant law applies. However a short reference to the other Directives mentioned in INSPIRE Directive is made in chapter 3.1.11.

Restrictions are to be considered as justified exceptions to the general rule and aim of sharing. As such, the Directive foresees a limited number of (policy) domains in which specific risks can occur when disclosing certain spatial data, or providing access to certain services.

In formulating any agreement it may be necessary to bear in mind that in very specific cases, exceptions to the restriction may occur as well. For example access to spatial data which have to be readily available in emergency situation e.g. a forest fire threatening a military installations could make it necessary to access to some military data which would otherwise fall under the non-disclosure restriction under national defence.

While restrictions can be necessary INSPIRE has a general aim to improve data sharing. Article 2 therefore also foresees that, if possible, Member States or public authorities should state under what conditions access to otherwise restricted spatial data sets and services in accordance with Article 17(7) can be allowed. The reason for this provision is due that there may be situations in which the data could be provided, but only if some additional measures are taken, such as more stringent access controls or if some information is removed. These should be stated by the Member State or public authority so as to enable data sharing wherever possible. Restrictions should not be seen as all or nothing – careful consideration should be given to allowing as much access as possible to the data and services by introducing other means of managing the sensitivity.

## **2.3 Article 3: Arrangements**

Article 3.1 states that any arrangements made under INSPIRE as regards access to spatial data sets or services for the Community institutions and bodies, must be compliant with the Regulation itself. There is no need for further guidance on this article.

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Article 3.2 further states that all the definitions laid down in Article 3 of Directive 2007/2/EC shall be used in any arrangements concerning access to spatial data sets and services. The definitions foreseen in the Directive therefore directly apply and the terms defined there should be used in any arrangement. Also as explained in paragraph 2.1.1 it has been decided not to seek to further define these terms in the Regulation.

## **2.4 Article 4: Use of spatial data sets and services**

The Regulation is aimed at regulating access to data sets and services although this article is clarification of a use issue.

Any agreement of access to the data is, according to INSPIRE Directive, at the discretion of the Member State, unless it is proven to be a hindrance to data and service sharing. However, art. 4 seeks to clarify that contractors acting on behalf of the Community institutions and bodies are considered as an integral part of these institutions and bodies and therefore should be treated as one and the same entity. It would still be useful to have a formal agreement or contract between the Community institution or body and the contractor to regulate rights and duties and other aspects of the contract including any intellectual property rights in data created.

## **2.5 Article 5: Metadata**

Article 5 requires specifying the conditions for sharing applicable to the Community institutions and bodies in metadata element 8.1 described in Part B of the Annex to Commission regulation (EC) No 1205/2008. This metadata element is described as follows:

*8.1. Conditions applying to access and use - this metadata element defines the conditions for access and use of spatial data sets and services, and where applicable, corresponding fees as required by Article 5(2)(b) and Article 11(2)(f) of Directive 2007/2/EC. The value domain of this metadata element is free text. The element must have values. If no conditions apply to the access and use of the resource, 'no conditions apply' shall be used. If conditions are unknown, 'conditions unknown' shall be used. This element shall also provide information on any fees necessary to access and use the resource, if applicable, or refer to a uniform resource locator (URL) where information on fees is available.*

This should allow all users, including Community institutions and bodies, to find the conditions for sharing that apply to them.

This metadata element is defined as a free text element. It should contain a general description of the conditions applying to access and use; with reference to web pages where detailed information can be found.

Article 5 (1) of the INSPIRE Directive clearly requires Member States to keep metadata up to date which means that any changes in the conditions have to be reflected in the metadata in timely manner. It is sufficient if the webpage it is referring to is kept updated in a timely manner. Care should be taken to provide correct information in the metadata.

## **2.6 Article 6: Transparency**

The principle of transparency is an important part of good public administration. In the context of INSPIRE data and service sharing it is about the Member States and their public authorities being clear on how their data are collected, processed and can be obtained.

The reason for transparency on data collection and processing is so that the user can determine whether the data or service is fit for their particular purpose. Some of this information may be available as metadata, but more detailed information should also be made available if it is available and requested, to allow an assessment of fitness to be made. This further information is particularly important if the data or service is to be used for a purpose which is different from that for which it was originally collected or published. Examples might be de-

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tailed information on how data was collected, or the algorithm used in processing in a service.

There is no intention to duplicate or supplement the Metadata Regulation (COMMISSION REGULATION (EC) No 1205/2008 Implementing Directive 2007/2/EC of the European Parliament and of the Council as regards metadata) nor the draft COMMISSION REGULATION (EU) Implementing Directive 2007/2/EC of the European Parliament and of the Council as regards interoperability of spatial data sets and services. The Regulation on data and service sharing requires (Article 6 (1)) that additional information for evaluation and use should be made available upon request. Unlike the Metadata Regulation and the draft Implementing Rules on the interoperability of spatial data sets and services there is no requirement to produce information, only to provide it if it is readily available and requested by the users.

When charges apply, Member States shall ensure that such charges do not create practical obstacles, occurring at the point of use, to the sharing of spatial data sets and services (see article 17.2 of the Directive). In order to demonstrate compliance with these conditions, the Member State or public authority may be asked to clarify the basis on which they have arrived at the charges (Article 6(2)).

## **2.7 Article 7: Response times**

The situation which the INSPIRE Directive seeks to achieve is that access can be sought and provided almost instantaneously using the services provided by the data publishers. However, it is accepted that this will take a period of time to achieve and in some exceptional cases might be never achieved. Therefore the Regulation addresses the existing situation in which these services are not yet available.

The provision of access to the spatial data sets or services shall take place within 20 working days after receipt of a request, according to article 7 of the Regulation. This timeframe may be extended by mutual agreement of the public authority or Member State and the institution or body of the Community.

Any request originating from an institution or body of the Community will be considered a legitimate request.

As a general principle, there should be no unnecessary delay. A fast response can be facilitated by harmonised licences and simple access procedures. Some selected examples are described in the "Good practice in data and service sharing" document<sup>4</sup>.

Generally, access to data and/or services should be provided as soon as possible. All necessary steps should be taken without any unnecessary delay including, if necessary, invoicing and receiving payment. Due consideration should be given to the type and use of data and/or data services, ensuring that the response time is appropriate for the given use. For example, water data during a flood may cease to be useful if its supply is delayed too long. However, if it is required for climate comparisons, waiting some days to receive the data may be acceptable. The supplying authority should normally have considered carefully how current the data needs to be for their users, so an appropriate response time is generally already included in their normal supply times.

Ultimately the goal is that download services established according to the Directive will allow for immediate online access and download without any delays for human processing. For datasets requiring payment this may involve some form of e-commerce facilities. The Community institutions and bodies may not make use of electronic payment facilities under the present financial regulation, applicable to the general budget of the European Communities<sup>5</sup>.

<sup>4</sup> <http://inspire.jrc.ec.europa.eu/index.cfm/pageid/62>

<sup>5</sup> [http://ec.europa.eu/budget/documents/financial\\_regulation\\_en.htm](http://ec.europa.eu/budget/documents/financial_regulation_en.htm)

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Use of download services for these datasets will therefore depend on pre-existing arrangements. Still, it should allow the response time to be very short, when the information on access and use are well publicised in the metadata.

In any case the request should be in writing by any means (e.g. hard copy, email, web message).

If access cannot be provided without delay, the data provider should immediately provide information explaining the cause of the delay and the parties have to mutually agree on a new response time.

## **2.8 Article 8: Transitional provisions**

The Regulation comes into effect in stages to allow time for Member States and their public authorities to produce and put into use the necessary licences or other arrangements. Two situations are covered in the Regulation – first for new supplies of data or services, second to replace existing arrangements.

In the first situation, eighteen months are allowed from entry into force of the Regulation until the conditions in the Regulation are mandatory for all supply of data and services within scope.

For the second situation, in which there are existing arrangements, compliance can be postponed until the arrangements are due for renewal, for maximum 3 years after the Regulation entry into force.

The Regulation will apply whether or not the Data Specification Regulation is in effect for the theme of the dataset or service, or the Network Services Regulations are in effect, as the only reference to decide if a spatial data set or service is covered by INSPIRE sharing requirements is the INSPIRE Directive itself.

## **3 Further guidance on the provision of access to spatial data sets and services from Member States to the Community bodies and institutions**

While the previous section provided more information on the provisions of the Regulation and how these should be understood, this section aims to give guidance to the Member States and the public authorities, as well as to the Community institutions and bodies in which way they can promote further harmonisation for access and use.

Hence, this section does not contain any obligations for the Member States and the public authorities, nor for the Community institutions and bodies, but rather guidelines or advice on how harmonised conditions could best be achieved.

### **3.1 General guidance**

#### **3.1.1 INSPIRE use**

According to the Directive, the spatial data sets or services provided under the Regulation may be used for activities which may have an impact on the environment and where the purpose of those activities is a public task of the institution or body of the Community.

While the Regulation does not specify the rights of use of the institutions and bodies of the Community, this Guidance aims to provide guidelines for the framework for use under the Directive, by focusing on the purpose of the activity rather than the activity itself, as it is not practical to list all those activities which may be needed to fulfil the public task of the institution or body. This suggested harmonised right of use is referred to as 'INSPIRE use'.

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Internal reporting within and between the institutions and bodies is included in INSPIRE use where it is part of the public task that may have an impact on the environment. Note that this is not the same as the reporting obligations placed on Member States by environmental Directives, which are not covered by the Regulation (see 3.1.3).

### **3.1.2 Public Access to data and services supplied under INSPIRE**

If no provisions for public access are contained in the agreement between Member States and the Community institutions and bodies then access given by the institutions and bodies should be guided by whether public access is already, or could be, allowed in the Member State and under what conditions.

When this public access to spatial data sets or services cannot be allowed, due to an exemption provided for by law, data producers are encouraged to state the conditions under which such an access is possible, for example by removing sensitive information, downgrading the accuracy or restricting the size of the download possible. It is also suggested that any such measures are, as far as possible, harmonised within and between Member States, so that they can effectively be applied to aggregated data sets that potentially may come from a large number of producers.

Public access to Member States' spatial data sets and services could be of interest to Member States and the public in general when Community institutions and bodies produce aggregated spatial data sets or services based on data coming from several Member States. In this case the resulting datasets offer added information value in that they provide access to spatial information collated at a European level. Public access should therefore be promoted as much as possible, while respecting any exemptions provided for by law.

### **3.1.3 Reporting obligations from the Member States**

Neither the Directive nor the Regulation addresses spatial data or services sharing that are provided by the Member States or their public authorities for the fulfilment of their reporting obligations.

Use of data or services for reporting obligations may for instance be based on:

- Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directive 85/337/EEC and 96/61/EC;
- Regulation 2152/2003 of the European Parliament and of the Council of 17 November 2003 concerning monitoring of forests and environmental interactions in the Community;
- Commission Decision of 17 July 2000 on the implementation of a European pollutant emission register (EPER) according to art. 15 of Council Directive 96/61/EC concerning integrated pollution prevention and control (IPPC).

The Community institutions and bodies must be aware that the datasets and services they have access to may have been provided under differing terms and conditions depending upon whether they were provided in fulfilment of a reporting obligation or not. A consequence of this is that different conditions of use can apply to a single data set, depending on whether it has been provided to the Community institutions and bodies under an environmental reporting obligation or if it has been provided under INSPIRE.

### **3.1.4 Emergency access and use**

In case access is not already available it is advisable that the Members states have in place adequate measures to provide access to Community institutions and bodies as well as to national bodies, in the case of a major emergency. These measures should allow for spatial

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data sets or services to be provided without delay and in the timeframe required to adequately respond to the nature of the emergency. This could be within a couple of days or within a couple of hours, depending on the emergency in place e.g. a big forest fire near a military placement requires immediate access to any relevant information.

In any case the reply to Community institutions and bodies should not exceed the time for the national bodies. In the context of INSPIRE special interest is given to major emergencies that have an impact on the environment.

Environmental emergencies could include but are not limited to:

- natural disasters such as floods, earthquakes, heavy wind storms, periods of extreme temperatures,
- man-made environmental accidents such as oil spills, nuclear accidents, dispersion of dangerous chemicals or gases.

When emergency access is required and no prior arrangement is in place access to data and services could be given under a limited short-time licence for the actual emergency situation thus providing legal protection and trust. For services the emergency supply could be implemented as a 'push the red button' type of functionality which can be turned off after the emergency if necessary thus providing technical protection against unlicensed use.

If there is a prior arrangement for access to data or services, it is advisable that it includes measures for emergency access in the situations described. Such measures could include the provision of a contact point for emergencies such as 24/7 phone numbers, emergency usernames and passwords for data download services. For international responses, these measures could be made available from the national INSPIRE contact point, the national geoportal or other appropriate and easily found source.

The need for appropriate measures for emergency access and use can be linked to the Council Decision of 8 November 2007 establishing a Community Civil Protection Mechanism. This Decision links in Article 6 the trans-boundary consequences of a "major emergency" and the need for notification at EU level:

*"In the event of a major emergency<sup>6</sup> within the Community, or of an imminent threat thereof, which causes or is capable of causing trans-boundary effects, the Member State in which the emergency has occurred shall, without delay, notify the Commission and those Member States which may be affected by the emergency."*

A link should also be made between the possible request for assistance following a major emergency and the need to inform the Commission:

*"In the event of a major emergency within the Community, or of an imminent threat thereof, which may result in a call for assistance from one or more Member States, the Member State in which the emergency has occurred shall, without delay notify the Commission, when a possible request for assistance through the Monitoring and Information Centre (MIC) can be anticipated, in order to enable the Commission, as appropriate, to inform the other Member States and activate its competent services."*

### 3.1.5 Access management for services

There are a number of situations in which the access to spatial data services needs to be managed and controlled. These include, for example, when they contain data which is personal or sensitive, when a licence has to be accepted, previously licensed access rights confirmed, a charge made or performance of the services managed. In each of these cases there will be

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<sup>6</sup> "major emergency " is defined as "any situation which has or may have an adverse impact on people, the environment or property and which may result in a call for assistance under the Mechanism"

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a need for one or all of authentication, authorisation, e-commerce or click-through acceptance of some kind. There are a number of technical solutions to access control which can be used.

The INSPIRE legislation does not provide any implementing rules for standards for access interoperability and as a result data publishers will implement their own solution. This is likely to lead to a decrease in interoperability of services particularly when automatic machine to machine access is sought. This problem is recognised by the Commission who are addressing it as part of the Interoperability Solutions for European Public Administrations Programme (ISA Programme).

In the meantime, it would be good practice to adopt a solution which is based on internationally recognised open standards and interoperable access control systems.

### **3.1.6 Acknowledgement of intellectual property rights**

The data supplier can protect its intellectual property rights, and those held by other entities whose data it has been permitted to distribute, by requiring the Community institution or body to make acknowledgements and to state how and where these are to appear. If needed, such specification will be included in the licence.

Also in this case there is potential for situations in which there are a number of datasets or services involved. For example if acknowledgement is required in the image returned by a View Service, and many View Services are drawn in to one application, there is scope for the image being obscured by the acknowledgements all falling on different parts of the image. It is therefore recommended to develop simple and possibly harmonised measures to be agreed nationally and in a long term perspective with all the relevant Member States and their relevant public authorities. It is up to the Member State to take such initiatives. A possibility could be to include such an approach in a European Project.

### **3.1.7 Charging for spatial data sets and services**

When charges apply, Member States shall ensure that such charges do not create practical obstacles, occurring at the point of use, to the sharing of spatial data sets and services (see article 17.2 of INSPIRE Directive).

In order to demonstrate compliance with these conditions, the Regulation on Data and Service Sharing foresees that the Member State or public authority may be asked to clarify the basis on which they have arrived at the charges, as outlined in chapter 2.6.

When charges apply, the Community institutions and bodies will be required to apply the Financial Regulation applicable to the general budget of the European Communities (Council Regulation (EC, Euratom) No 1605/2002) and further amendments.

These include the need for a written contract, which usually consists of three parts: special conditions, general conditions and annexes. The Financial Regulation foresees a limited number of procedures for concluding a contract including the open and the restricted procedure and the publication of a contract notice in the Official Journal. In exceptional cases, the Commission can use a negotiated procedure rather than an open call for tender. This is directed towards specific products for which there is only one possible supplier. This may be the situation for some of the INSPIRE datasets and services.

If multi-party contracts are concluded between Member States public authorities on the one side and several institutions and bodies of the Community on the other side, as for example in the case of framework agreements, the Financial Regulations will still have to be followed if charges are made.

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### 3.1.8 International data sets and services

The Directive can only address Member States and their public authorities with respect to spatial data sets and services falling under the scope of the Directive as specified in Article 4(1). However this does not mean that international data sets and services including data from more than one country are not addressed. They are addressed insofar as they are held by or on behalf of a public authority, and have been produced or received by a public authority, or are managed or updated by that authority and fall within the scope of its public task.

So the Member States and their public authorities are responsible for making these data sets available according to INSPIRE conditions but this could be achieved by making sure that another entity makes them available in conformance with the INSPIRE requirements on their behalf. This can be a national, a European wide or any other international entity. Examples are ECOMET which holds data on behalf of a number of meteorological organisations and EuroGeographics distributing datasets on behalf of the National Mapping and Cadastre Authorities.

In this context INSPIRE sets minimum conditions, so obviously agreements going beyond these minimum conditions still respect INSPIRE requirements and therefore fulfil INSPIRE obligations. In the case of data sets and services covering territory outside the areas where Member States have and/or exercise jurisdictional rights the INSPIRE obligations only apply to the Member States territory. This does not mean that the data sets outside of the territory may not be supplied under the same conditions. This would certainly be very useful, but strictly speaking there is no obligation to do so.

It also has to be pointed out that the provision of data or service through any kind of framework agreement is very much encouraged as it allows inclusion of several partners under a common set of rules and thereby fosters harmonised data sets and licensing schemes which greatly facilitate the integrated use of different data sets. This is given more attention in the "Good practice in data and service sharing" document<sup>7</sup>.

### 3.1.9 Provision of spatial data sets and services by other entities

It is quite common for public authorities in Member States to use other entities to supply their data and services. When this is the case, it is the responsibility of the public authority to ensure that the other entity fulfils all the obligations of the Directive and its implementing rules on behalf of the public authority.

The means by which the public authority does this can vary, but it is suggested that rather than simply mandate the use of a licence, a separate requirement is placed on the other entity as part of their contract. In any case, the public authorities remains under the obligation to provide access to the spatial data set or service, whether it does so itself or via a third party.

#### 3.1.10 Coordination

##### 3.1.10.1 Structure

The current situation in many Member States is that if an institution or body of the Community requires spatial data sets or a service from a Member State's public authority, it must approach the public authority directly on a one to one basis. This is inefficient and time-consuming. Increasingly both sides will be dealing with multiple themes, data sets, coverages, services etc.

Streamlining of the sharing procedure covering both the licensing process and the provision of access is required. It is therefore advisable for a structure to be put in place to improve the

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<sup>7</sup> <http://inspire.jrc.ec.europa.eu/index.cfm/pageid/62>

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efficiency of data and service provision from the Member State to the institutions and bodies of the Community.

Technical solutions supporting streamlining are geoportals and public data portals.

A good practice may be to assign the responsibility for contacts between the Community institution and/or body and the relevant public authority of the Member State to the national contact point or any other single responsible organisation. However, that does not preclude the Member State establishing sharing arrangements through direct contact between its public authorities and the institutions or bodies of the Community or via an alternative arrangement.

### **3.1.10.2 Measures**

It is recommended that the Member State takes appropriate measures to

- a) ensure communication of the Regulation to all the public authorities across the different levels of the government;
- b) promote the use of framework agreements in accordance with the Regulation for the access to spatial data sets and services from the Member States and the public authorities to the institutions and bodies of the Community.
- c) streamline the process for institutions and bodies of the Community to obtain access to spatial data sets and services, including optimising the number of specific licences required and the process for establishing them;
- d) streamline the practical mechanisms for obtaining access to the data and services;
- e) enable an effective response to requests for spatial data sets and spatial data services in emergency situations.

The Member State should ensure that if an institution or body of the Community requests information about the responsible stakeholders and established procedures within that Member State for the provision of spatial data sets and services to the institutions and bodies of the Community, this information can be supplied without delay.

### **3.1.11 Links to other Directives**

The INSPIRE Directive makes a reference to other Directives that may be applicable to the provision of spatial data sets and services, such as Directive 2003/4/EC on public access to environmental information and Directive 2003/98/EC on the re-use of public sector information.

The INSPIRE directive increases the technical access and practical use of spatial data, mainly for public bodies through the sharing arrangements, but also for the general public through the services. However, it does not influence the rights of the public to access data under the PSI directive, the environmental access directive or other national regulations on access to public information.

This means for example that one cannot refer to the lack of INSPIRE compliant services as grounds for refusing access to public sector information or environmental information under any of the mentioned directives. Furthermore, re-use of data provided for on the terms of the INSPIRE directive will still be regulated by European and national PSI regulations.

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## 3.2 Licensing

### 3.2.1 Introduction

This Guidance gives more information on how any written licence may be harmonised. It is advisable that any licence states that it is an 'INSPIRE' licence to make clear that any terms use the definitions from the Directive and the Regulation. It also includes suggestions for the legal clauses that are useful to include in making a licence agreement.

A licence can assume different forms, e.g. e-mail, a non-transactional statement on a webpage, a click licence, or a licence agreement signed by all the parties involved. Whatever forms it takes, it is legally binding and defines the conditions of use of the related spatial data sets and services. This is why specific attention has been given to INSPIRE licences presented in the following chapters. The terms presented in the following chapters can be used for all these different forms of licences.

Use of a formal written or electronic licence is not mandatory and the supplier may choose not to use one. Any licence in any form that are being used for the access under the INSPIRE Directive according to article 17 must be compliant with the terms of the Directive as well as the rules of the Regulation. Even in the absence of any written or otherwise documented licence, these rules will apply.

As regards more specifically INSPIRE use the Regulation on Data and Service Sharing in article 3 it states that

1. *Any arrangements concerning access to spatial data sets and services shall be fully compatible with the requirements of this Regulation.*
2. *The definitions laid down in Article 3 of Directive 2007/2/EC shall be used in any arrangements concerning access to spatial data sets and services.*

To allow a timely response to any request for spatial data sets and services, the licences needed to share these resources should be discussed and prepared internally before an actual request is made. To ease the communication and respect the deadlines given by the legislation, it might be useful to prepare the licence agreements in English beforehand. When a written licence is used, it can either be a single licence covering the provision of one data set or service from one authority to another authority, or a framework agreement, which is an agreement between authorities covering one or more data sets, concluded before the data is needed, therefore removing a potential obstacle at the point of use. Single licences will generally be granted at the moment where the institution or body of the Community needs access to a spatial data set or service and contacts the Member State or the public authority that owns this data or services to obtain access. However, providing an agreement for each delivery can become an obstacle at the point of use. Therefore Member States and their public authorities are encouraged to make framework INSPIRE agreements on data and service sharing with the institutions and bodies of the European Community prior to the need for data or services.

If such agreements are not available, the Member States or the public authorities are encouraged to use the Basic or the Specific template INSPIRE licence included in the Annex to this Guidance, as a basis for their own licences to achieve maximum harmonisation.

- The Basic INSPIRE Licence (Annex B) applies when spatial data sets or services can be used free of charge under the conditions in the INSPIRE directive without further restrictions or conditions.
- The Specific INSPIRE Licence template (Annex C) can be used when a Member State public authority wishes to grant the Community institution or body specific additional rights of use or wants to impose specific additional conditions on that use and/or charges.

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The relevant options should be selected and the relevant schedules completed in order to produce the required licence.

The Member State or public authority may wish to allow wider use of the data set or service than that which is required under the Directive (see INSPIRE use). This is possible by setting out the additional use rights in a schedule to the licence, or concluding a separate licence.

The Basic INSPIRE Licence and the licence template for the Specific INSPIRE Licence will be made available through the INSPIRE website, and should also be readily available in Member States. Where optional clauses are needed, the Member State is encouraged to harmonise these optional clauses for that Member State so that a single common wording can be applied as much as possible. To maintain maximum harmonisation, Member States are discouraged from re-ordering the articles.

### 3.2.2 Machine-readable licences

It is increasingly common for 'machine-readable' licences to be used. This term can mean a number of different things. It can mean:

- It is in electronic form, e.g. a Word document or PDF
- Adding a tag to a hyperlink to a document to indicate that the document is a licence, e.g. rel="license"
- That the licence is expressed in xml and/or rdf using an agreed language and template, e.g. ISO/PRF 19149 (GeoREL)  
<http://www.iso.org/iso/rss.xml?csnumber=32567&rss=detail>
- It is generated automatically by a machine based on input from a potential user. The output of this could be any one of the three possibilities above.

INSPIRE has not adopted any specific standards for machine-readable licences but is keeping a watching brief on development in ISO19149. Member States and public authorities are encouraged to move their licence arrangements up the spectrum from paper – electronic form – hyperlink tagged - xml/rdf to increase their visibility and interoperability. In addition systems which automatically generate licences could facilitate the requirement of the Directive to reduce obstacles at the point of use.

### 3.2.3 Use of the Basic INSPIRE licence

A 'Basic INSPIRE Licence' is an agreement that enables access to the spatial data sets and services under INSPIRE to be provided by the public authorities to Community institutions and bodies under basic INSPIRE conditions without any further restrictions or conditions and free of charge. For spatial data sets the Basic Licence is perpetual, while for spatial data services the licence terminates when the service is discontinued.

The Basic INSPIRE licence contains a first part that covers all the clauses that apply to spatial data sets and to spatial data services. Following this general part there are 2 separate sections, one containing the clauses that apply only to spatial data sets and one containing the clauses that apply only to spatial data services.

The public authority may refer to the Basic INSPIRE licence with a reference to a website it appears on (such as the INSPIRE national or European Geoportal), in e-mail to the actual receiver, on a CD/DVD containing the data, or in any other way that is useful to ensure that the receiver is aware that these are the conditions for receiving that particular data set or service. When the licence is used in this way, the user does not need to enter into a separate agreement with the right holder to use the work. The user accepts the licence just by using the work. Hence, if the Member State or public authority states that its spatial data sets or services are subject to the Basic INSPIRE licence, this means that the institution or body of the Community will automatically become a licensee and be subject to the conditions of the

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Basic INSPIRE licence, just by using the data sets or services. The Basic INSPIRE Licence may also be used as a 'click-licence' prior to download of a data set.

As in many cases where the Basic Licence is used, the user is not known or reachable, this licence is perpetual for spatial data sets, as there is no way to contact the user in order to inform him about any termination of the licence.

In the case of spatial data services termination is simply at the discretion of the service provider, who can terminate the service whenever he decides to do so. Good practice would be to give notice to the users in advance through whatever means.

However, if the Member State or its public authority needs to include restrictions allowed for by law, for example regarding charges, or want to set further rights of use, then a Specific INSPIRE licence should be used.

If the Member State or its public authority is making the dataset or service available free of charge and free of restrictions for everyone, this will of course include anyone requesting it under the INSPIRE directive. However, it is important to note that this is also a licence and needs to have these terms clearly set out for the users.

### **3.2.4 Use of the specific INSPIRE licence template**

The Specific INSPIRE licence agreement can be used by the Member States and their public authorities as a template for their actual licence agreement. It allows the Member States or the public authorities to specify a number of harmonised options. Unlike the Basic INSPIRE licence, it needs to be completed by the parties to customize it for the provision of access to a particular data set or service. The template for spatial data sets and services is included in Annex C.

Also the Specific INSPIRE licence contains a first part that covers all the clauses that apply to spatial data sets and to spatial data services. Following this general part there are 2 separate sections, one containing the clauses that apply only to spatial data sets and one containing the clauses that apply only to spatial data services.

Many of the sections in this template licence can be included word-for-word. Some of the sections leave options to choose from and others can be filled out according to the specifications given in the explanatory text between the [] brackets. The highest level of harmonisation will be achieved if Member States or public authorities copy the terms of the template licence, choose one of the given options where they are given a choice, and fill out the details that are required in the fields that are left open.

The Specific licence can be adapted to the licensor's and the licensee's specific purpose and is presented to the licensee who accepts this licence specifically in the way that the licensor prescribes. However, by starting from a template with suggested options the level of harmonisation is maximised.

The Specific INSPIRE licence can be used as a paper-based licence, or a published licence along the same lines as the Basic INSPIRE licence, appearing at the website of the Member State or the public authority in question. Also the Specific template INSPIRE licence may be presented as a form of click-licence on-line.

If the user is known and reachable specific terms for the termination can be specified. If the user is not known, the same approach as for the Basic licence applies.

### **3.2.5 Use of an INSPIRE Framework Agreement**

In the context of INSPIRE a Framework Agreement can be seen as a licensing agreement between one or more institutions and bodies of the Community on the one hand and one or more public authorities in a Member State on the other hand concluded prior to the datasets or services being required. The agreement may address one or multiple data sets or ser-

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VICES. A distinctive characteristic of the INSPIRE Framework agreement is that it is always an agreement concluded prior to need. Whilst a Specific INSPIRE Licence or a Basic INSPIRE licence may be concluded prior to need, in most cases they will be concluded at the point in time when the data is needed.

Framework Agreements will produce benefits for the institutions and bodies of the Community as well as for the Member States as it reduces the efforts of establishing data sharing agreements for all the partners as it requires the management of only a small amount of contracts, and, where required, financial transactions.

The Framework Agreement is set up in a way that case by case negotiations, procurements, contracts, licences etc. are no longer needed “at the point of use” of the spatial data sets and services. In other words: the prior settlement of the agreements takes away a major threshold for usage of spatial data sets and services in an operational policy context as any public servant covered by the Framework Agreement does no longer need to worry about paperwork related to the sharing aspect prior to the actual usage of the spatial data and services. As many policy related processes are organised either cross-cutting various departments of a governmental level, or throughout the various levels of government in a Member State, and therefore require contributions, e.g. spatial data sets, from different institutions and departments, such a framework agreement, which largely facilitates the actual sharing of spatial data and services, enhances the efficiency of these processes. Similar efficiencies can be gained in the institutions and bodies of the Community.

An INSPIRE Framework agreement may be broader than just the provision of spatial data sets and services under INSPIRE, but in any case, it will have to fulfil the requirements set by the Directive and the Regulation.

A framework agreement is an important mechanism for providing access to spatial data sets and services in emergency situations. As the contractual aspects have been settled before hand no further negotiations are needed during an emergency situation and access to the data or service can be provided directly. The benefits of Framework Agreements rise with the number of partners being included: the more public authorities and data sets can be included in a single arrangement, the more transparent and smooth sharing becomes for the end-users.

To come to some successful Framework Agreement with all its benefits it is necessary to spend time in the preparatory negotiations. There are likely to be diverse ideas to consider and it is crucial that all partners are willing to compromise.

It is obvious that for Framework Agreements a bigger time frame needs to be scheduled than for a bilateral contract. A pragmatic stepwise approach will help in making a quicker start-up. It might also be helpful to create or integrate a coordination body for Framework Agreements. The coordination body can just be a facilitator for the development of the Framework Agreements, e.g. by providing templates for possible policies and / or it can be a part of the out coming Framework Agreements, e.g. by providing an access point to the data sets and services.

Current developments in identity management and federated communities of trust may be helpful in administering the framework agreement once in place (an example of how this was explored in ESDIN: <http://www.esdin.eu/fr/node/149>).

It is advisable to use the terms of the Basic or Specific INSPIRE licence agreements as far as possible in setting up a Framework Agreement. A number of elements should be covered as a minimum:

- Licensing: An INSPIRE Framework Agreement should comprise the requirements laid down by the INSPIRE Directive and the Regulation. Framework Agreements might vary in their individual specifications, e.g. to adapt regulations to the national situation. The Specific INSPIRE Licence foresees such options which allow integration of such individu-

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al specifications. Where Framework Agreements already exist the goal should be to extend or adapt the existing agreements towards the INSPIRE Framework Agreements.

- Duration and renewal: Framework Agreements should cover a longer period of time, at least one year. Various formulas can be envisaged, but the basic idea is that the end-user can access and use the spatial data and services more or less on a continuous basis. This entails that the Framework Agreement either covers a sufficiently large period in time, or that a flexible renewing mechanism is foreseen, allowing for continuity in the operational allowed usage.
- Openness: Framework Agreements do not have to automatically open the door for new members, but they should foresee a flexible mechanism to enable future interested stakeholders to join in without jeopardising the whole framework.
- Private Participation / Partnership: The Framework Agreement should ideally cover a high fraction of stakeholders. This may also include private partners where it is necessary and useful. In this sense the Framework Agreement can be seen as a kind of Public Private Partnership where public partners as well as private partners can be data collectors, providers or users.
- Stepwise implementation: Trying to include the largest possible number of participants right from the beginning may prove to be unfeasible. It is therefore recommended to “think big”, but to “start small”. A successful approach is to go for a limited number of partners, preferably involving the sharing of data sets for which there is a general feeling amongst stakeholders that access to these data should be arranged for in the short term and for which a sufficiently important number of administrative or policy driven processes can make use of these data on a structural basis.

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## Annex A. Commentary on licences and their usage

Two types of INSPIRE agreements are proposed in the following annexes, a Basic INSPIRE agreement and a template for a Specific INSPIRE Agreement.

The Basic INSPIRE Agreement can be further divided in 2 sub-agreements: a Basic INSPIRE Licence for spatial data sets and a Basic INSPIRE Service Level Agreement for spatial data services. This type of agreement can be used for data sets and services under INSPIRE use, without any further restrictions or additional rights and free of charge. For spatial data sets this agreement is perpetual, while for spatial data services the agreement terminates when the service is discontinued.

If further restrictions, allowed for by law, are needed, for example regarding charges, or if further rights of use should be set, then a Specific INSPIRE agreement is needed.

In the following the different clauses are presented, while at the end of the chapter an overview of the different clauses in form of a table is presented, which specifies which clauses are used in the Basic INSPIRE agreement (licence, service level agreement, common part), and which in the Specific INSPIRE agreement template (licence, service level agreement, common part).

### **Preamble**

The Preamble contains explanatory statements on the context of the rights and obligations of the Member States and the institutions and bodies of the Community, as defined by the Directive and the Regulation. It provides more information on the purpose of the template agreement, i.e. harmonising the terms and conditions for access of the institutions and bodies of the Community.

The Preamble clarifies that the party to the agreement who will obtain access to the spatial data sets and services has to be one of the institutions or bodies of the Community.

The Preamble to the Specific INSPIRE agreement also contains a reference to the general rule of the Directive that any charges that may be included in the licence have to be fully compatible with the general aim of facilitating the sharing of spatial data sets and services between public authorities. Any charges that the agreement may set, will have to be kept to the minimum required to ensure the necessary quality and supply of spatial data sets and services together with a reasonable return on investment, while respecting the self-financing requirements of the public authorities supplying spatial data sets and services, where applicable. This is stated in Article 17(3) of the Directive.

The use of the Basic INSPIRE agreement and the template for the specific INSPIRE agreement is intended to facilitate the smooth access of the institutions and bodies of the Community under harmonised conditions to the spatial data sets and services held by the Member States or the public authorities as mentioned in the Regulation. This smooth access is hindered if it depends on ad hoc negotiations. Therefore, ideally all agreements should have the same provisions, or where this is not possible, a common structure and common terminology based on definitions of Article 3 of the Directive, to reduce the need for ad hoc negotiations to a minimum. The template for the specific INSPIRE agreement attempts to answer to that need and therefore its use should be encouraged for any provision of spatial data sets and services under the Regulation which is not covered under a INSPIRE Framework Agreement or a Basic INSPIRE agreement.

The terms of the agreement must always be in harmony with the Directive and the Regulation. If there is any doubt on the interpretation of the terms, the parties should look to the text and the spirit of the Directive and the Regulation for clarification and guidance. If there is any possible conflict in interpretation between the INSPIRE agreement on the one hand and the Regulation and the Directive on the other hand, the latter will prevail.

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### ***Parties***

The supplier will usually be the Member State(s) or a public authority. Depending on the co-ordination structure and measures within the Member States or between public authorities of different Member States, it might also be a national coordinating body, the national contact point or any other body that has received a mandate from the public authorities to make an agreement in order to provide access to the spatial data sets and services to the institutions and bodies of the Community (e.g. regional bodies such as EuroGeographics, EuroGeosurveys; cooperative organisations of municipalities or third parties from the private sector that are mandated by a public authority under public procurement to provide the service). As this body is acting on behalf of the public authority, be it private or public, it also falls under the rules of the Directive and the Regulation for the provision of the service.

The user will be an institution or body of the Community which is a legal entity. This may include, for example, the European Commission or the European Environmental Agency.

The Parties are not explicitly stated in the Basic INSPIRE agreement. They are implicit from the context in which the agreement is created.

### ***Definitions***

The definition of a number of the terms that are used in the agreement can be found in Article 3 of the Directive and are referred to in Article 3 of the Regulation. Any other definitions refer to terms of which the meaning needs to be understood in the context of the agreement, and may not be the same as their meaning in everyday life.

### ***Subject***

The details of the spatial data sets and/or services.

### ***Grant***

The user gets a non-exclusive agreement that cannot be transferred to any other party. Hence, if the institution or body of the Community that has entered into the agreement wishes to transfer one of its competences or task for which it had obtained the spatial data set or service, the agreement cannot be transferred with it. However, the data or service may be transferred so that the second institution can perform a task for the institution. If the second institution wishes to use the data or service for any other purpose they would have to enter into a new agreement with the Member State or the public authority.

The agreement will determine the use that can be made of the spatial data sets and services that are provided. Any other use is not allowed. If other use is allowed, but under a separate agreement then that agreement will no longer be subject to the Regulation. However, of course, the Member State or the public authority may still use other aspects of the INSPIRE agreement, in order to obtain wider harmonisation.

Although the grant in the agreement gives the supplier sole discretion to decide whether the data or service can be used for any other purposes, the supplier is, of course, still subject to other legislation which may require them to allow such use.

Although the Basic INSPIRE Agreement is referring to Directive 2007/2/EC (INSPIRE) and Commission Regulation (EU) No 268/2010 of 29 March 2010 (the Regulation), that is the provision of spatial data sets and services from the Member States to the Community institutions and bodies, the principles outlined can be used when spatial data sets and services will be provided from one Member State to another Member State or to a private company.

### ***Allowed use***

The description of allowed INSPIRE use is based on the provisions in the Directive. The data or service can be used for a purpose which is within the public task of the institution or body of the Community and which may have an impact on the environment. This includes any internal use.

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In the Basic INSPIRE Agreement and the template for the Specific INSPIRE agreement, the data or service can be passed on to other entities in a limited number of situations. The institution or body of the Community remains the responsible party, but it is good practice in these situations to put appropriate obligations on the other entity in the agreement made with them.

In the Basic Agreement public access may be allowed to the spatial data set or service if this does not constitute a duplication of the original data set or service from the Member State, or any data or service derived from it.

The Basic Agreement is intended for those cases where the spatial data sets are not under any restrictions from the Member States as to its re-use. If there are any restrictions (security, personal data, use restrictions, etc.), a Specific Agreement should be used, where these restrictions can be adequately reflected. The principles of the INSPIRE directive include that one should not duplicate efforts on a European scale, which will have the consequence that Community institutions and bodies should not unnecessarily replicate what is already available in the Member State. Therefore the Basic Agreement explicitly states that "Public access may be allowed to the spatial data set or service," and further specifies "without unnecessarily duplicating the original data set or service from the Member State, or any data or service derived from it". This in practice means that if the Community institutions and bodies are using Member States spatial data sets in one of their services they should bind the Member States service for this data set into their service, if such a service is available and compliant. If such a service is not available in the Member States then Community institutions and bodies can build their own services to give access to those Member State datasets.

If the Basic INSPIRE Agreement is used and if derived data sets have been created from the original data set, then these derived data sets can be made available in whatever form. The intention is that whatever added value is produced by the Community institutions and bodies this added value product can be made available for public access.

In the template agreement different conditions for public access to the spatial data or service can be specified. The public authority giving the agreement has to decide which situation is applicable to its case and adapt the licence accordingly.

### ***Public access and use***

The template for the Specific INSPIRE agreement foresees a specific section on public access, where different options are presented.

### ***Unauthorised use***

The Parties shall make every possible effort to avoid unauthorised use of the Subject. Unauthorised use is any use not listed in the licence or prohibited by law.

### ***Intellectual Property Rights***

This section provides the possibility to specify how the intellectual property rights should be acknowledged.

### ***Warranties***

The warranty includes any warranties which "follow from national law". National law can have particular requirements for a dataset or service to warrant a level of reliability.

Suppliers of data sets or services which include data with privately owned intellectual property rights should ensure that in their licences with the third party that they are permitted to pass the information to the institutions and bodies of the Community.

### ***Security***

The institution or body of the Community obtaining access to the spatial data sets or services will have to keep up an adequate level of measures to protect the integrity and security of the data or services they obtain access to.

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When access to spatial data sets or services cannot be allowed, due to any exemption provided for by law, Member State or the public authority providing the agreement for the data or service may state the conditions under which such an access is possible for example by taking additional security measures. If the public authority or the Member State chooses to impose specific security measures, they must provide the details in a schedule to the licence.

### ***Liability***

This is to exclude any liability except where liability for the supplier is prescribed by national law.

### ***Quality and conformance***

Where applicable this makes reference to the quality of spatial data sets and services as defined in the INSPIRE implementing rules or to higher quality standards.

### ***Pricing and payment***

The Member State or public authority can provide the spatial data set or service free of charge, but it can also impose a charge within the conditions of the Directive and the Regulation. If there is a charge, it should be described in a separate schedule to the agreement. In this instance the Basic INSPIRE Agreement may not be used as it is only designed for free of charge arrangements.

### ***Access and delivery***

The Member State or the public authority providing the agreement for the spatial data sets or services must ensure that the institution or body of the Community can obtain access in a timely and efficient manner, according to art. 7 of the Regulation.

Where an INSPIRE Network Service is used, the response time of that service must comply with the implementing rules on network services. However, for access and delivery where services are not used because, for example they are not yet in place, other arrangements can be written in to the licence using a Schedule.

### ***Personal data***

Processing of personal data has to be according to Regulation 45/2001 of the European Parliament and of the Council of 18 December 2000.

### ***Assignment, sub-licensing and sub-contracting***

When it states that the contractor shall have no right to retain the Subject after the end of the contract, this in practical terms means that in the case of spatial data sets these have to be deleted.

### ***Force majeure***

This section specifies what force majeure is and what actions the parties have to take. It also states that no party shall be liable for failures or have the right to terminate this agreement for any delay or failure in performance under this agreement if such delay or failure is caused by force majeure.

### ***Contact person***

This is an option for the specific agreement.

### ***Conflict resolution***

This section specifies that any dispute should first be tackled by negotiations, during which the agreement can be suspended.

### ***Applicable law and jurisdiction***

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A distinction has to be made between disputes between the parties to the agreement addressing the principles of the Directive itself and disputes addressing the terms of the agreement.

Any dispute that would address the principles of sharing as set out in Article 17 of the Directive should be seen as a dispute on European Community law, as a breach of these principles is a breach of EC law, which is regulated by the treaties of the European Union. When an agreement has been established, and a dispute arises on the execution of the terms of the agreement, then this should be considered as a problem related to contract law. For example, if the charges determined in the agreement are not paid within the time limit agreed by the parties, this is an issue under contract law. The Basic INSPIRE Agreement does not include a jurisdiction as it is intended that it should be left to the general rules of private international law to determine the applicable law. This is regulated by international Treaties. The template for the Specific INSPIRE Agreement allows a jurisdiction to be inserted and this should be used if the parties wish to specify the applicable law to be used.

### **Termination**

The agreement requires that there must be a reason for terminating the agreement. Reasons could include that the dataset is no longer produced or needed, or there is an irresolvable dispute. An unreasonable cause would be based on arbitrary reasons which result in unfair results, such as emotional reactions or prejudice. Almost any rational or business related reason would be considered reasonable.

For spatial data sets the Basic INSPIRE Licence is a perpetual licence. If a fixed term licence is required, the Specific INSPIRE Licence should be used.

As announced above find here the overview of the different clauses in form of a table which specifies which clauses are used in the common part of the Basic INSPIRE Agreement, i.e. of the Specific INSPIRE Agreement Template and which clauses are used in the sections dedicated specifically to spatial data sets and spatial data services respectively.

	Basic INSPIRE Agreement			Specific INSPIRE agreement		
	Common part	Licence for spatial data sets	Service level agreement	Common part	Licence for spatial data sets	Service level agreement
Preamble	X			X		
Parties				X		
Definitions	X			X		
Subject		X	X		X	X
Grant	X			X		
Allowed use	X			X		
Public access				X		X
Unauthorised use	X			X		
Acknowledgement of intellectual property rights		X	X		X	X

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Warranties	X			X		
Security	X			X		
Liability	X			X		X
Quality and conformance					X	X
Pricing and payment	X			X		
Access and delivery	X			X		
Processing of personal data	X			X		
Assignment and sub-licensing				X		
Sub-contracting				X		
Force majeure	X			X		
Contact persons				X		
Conflict resolution	X			X		
Applicable law and jurisdiction				X		
Termination		X	X	X	X	X

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## Annex B: Basic INSPIRE Agreement

The Basic INSPIRE agreement consists of two sub-agreements, a licence for spatial data sets and a service level agreement for spatial data services.

The licence and the service level agreement have many parts in common. The parts in common are formatted in black, while the parts in the licence that are specific for the spatial data sets are formatted in blue, and the parts in the service level agreement specific for spatial data services are formatted in green.

If an agreement for spatial data sets is to be made then it is sufficient to take the Basic INSPIRE Licence, if an agreement concerns spatial data services then the Basic INSPIRE Service Level Agreement should be taken.

A Basic INSPIRE Agreement can be used for spatial data sets and services under INSPIRE use, without any additional restrictions or rights and free of charge. For spatial data sets the Basic Licence is perpetual, while for spatial data services the service level agreement terminates when the service is discontinued.

If further restrictions, allowed for by law, are needed, for example regarding charges, or if further rights of use should be set, then a Specific INSPIRE agreement is needed.

### Annex B.1 Basic INSPIRE Licence for spatial data sets

#### Preamble

**Considering** that under Article 17(8) of Directive 2007/2/EC (INSPIRE), Member States or their public authorities shall enable the institutions and bodies of the Community to gain access to spatial data sets and services under harmonised conditions, and to exchange and use those sets and services, for the purposes of public tasks that may have an impact on the environment.;

**Considering** that a common structure and terminology of licences can play a role in stimulating the provision of spatial data sets and services under harmonised conditions.

**Whereas** the terms of this licence always must be considered to be in harmony with Directive 2007/2/EC and its implementing rules.

The subject (as defined below) is provided under the terms of this licence. By exercising any rights to the product provided here, the user accepts and agrees to be bound by this licence.

#### Definitions

The Definitions from Article 3 of Directive 2007/2/EC (INSPIRE) and supplementary definitions

Spatial data	any data with a direct or indirect reference to a specific location or geographical area (Article 3(2) of Directive 2007/2/EC (INSPIRE))
Spatial data set	an identifiable collection of spatial data (Article 3(3) of Directive 2007/2/EC (INSPIRE))
Spatial data services	the operations which may be performed, by invoking a computer application, on the spatial data contained in spatial data sets or on the related metadata (Article 3(4) of Directive 2007/2/EC (INSPIRE))
Public authority	(a) any government or other public administration, including public advisory bodies, at national, regional or local level; (b) any natural or legal person performing public administrative func-

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tions under national law, including specific duties, activities or services in relation to the environment; and

(c) any natural or legal person having public responsibilities or functions, or providing public services relating to the environment under the control of a body or person falling within (a) or (b). (Article 3(9) of Directive 2007/2/EC (INSPIRE))

Third party	Any natural or legal person other than a public authority.
Supplier	The public authority that provides access to the Subject under the terms of this Licence
User	The institution or body of the Community that obtains the right to use the Subject under the terms of this contract
Public task (of the institution or body of the community)	The development, implementation and monitoring of policies as defined by the EC Treaty and subsequent Community legislation
Major Emergency	Any situation which may have an adverse impact on people, the environment or property and which may result in a call for assistance under the Mechanism in Article 3 of Council Decision 2007/779/EC, Euratom of 8 November 2007 establishing a Community Civil Protection Mechanism

### ***Subject***

The spatial data sets provided under this licence are hereafter referred to as the Subject.

The spatial data set(s) provided under this licence equate to, include, or are components of the themes listed in Annexes I, II, III of Directive 2007/2/EC.

### ***Grant***

The supplier grants the user a non-exclusive and non-transferable licence to use the Subject according to the terms of Directive 2007/2/EC (INSPIRE) and Commission Regulation (EU) No 268/2010 of 29 March 2010 (the Regulation).

Use for any purpose other than permitted by this Licence is expressly prohibited without the prior written permission of the supplier, who in its sole discretion may deny such permission or claim a charge for it.

### ***Allowed use***

1. Institutions or bodies of the Community may make spatial data sets available to contractors acting on their behalf.
2. Where a spatial data set has been made available pursuant to paragraph 1, the party who received it may not make the spatial data set available to any other party without the written consent of the original data provider.
3. The spatial data set may only be used for activities where the activity may have an impact on the environment and the purpose of those activities is a public task of the institution or body of the Community.
4. Public access may be allowed to the spatial data set, without unnecessarily duplicating the original data set from the Member State, or any data derived from it.

### ***Unauthorised use***

The Parties shall make every possible effort to avoid unauthorised use of the Subject.

### ***Warranties***

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The supplier warrants to the user that to the best of its knowledge it has the authority and power to grant the rights granted under this Licence, has no reason to believe that the use of the Subject could infringe any other entity's rights and is not aware of any claim alleging that such infringement exists.

The supplier does not warrant that the Subject will meet the requirements of the user, unless this is stated specifically or follows from national law. Neither does the supplier warrant that its operation will be uninterrupted or error free.

Except as expressly provided in this licence, there are no conditions, warranties or other terms binding on the supplier with respect to the actions contemplated hereunder. Any condition, warranty or other term in this regard which might otherwise be implied or incorporated into this Licence, whether by statute, common law or otherwise, is, insofar as it is lawful to do so, hereby excluded.

### ***Security***

The User shall maintain adequate security measures to protect the integrity and security of the Subject. The User shall notify the Supplier of any breach or suspected breach of such security measures.

### ***Liability***

The Subject is provided on "as is" basis, without warranty of any kind, either expressed or implied, except as otherwise provided in this Licence. No oral or written advice given by the supplier or its dealers, distributors, agents or employees creates a warranty or in any way increases supplier's liability.

Neither of the Parties shall be liable for any indirect damage. The supplier shall not be liable for any damage arising out of reliance upon, use or inability to use the Subject.

The supplier shall not be liable for any harm that may be caused by the transmission of a computer virus, worm or other such computer program.

This clause does not exclude liability for the supplier where this is prescribed by national law.

### ***Pricing and payment***

The licence is free of charge.

### ***Access and delivery***

The Supplier shall ensure that the User gets access to the Subject in a timely and efficient manner, according to the terms of Commission Regulation (EU) No 268/2010 and this licence.

The Supplier undertakes to ensure that independent of the provisions agreed to for access, the User can get access to the Subject without delay in major emergencies with and impact on the environment.

### ***Processing of personal data***

The user undertakes to process personal data in accordance with Regulation No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the Community and on the free movement of such data (OJ L 8, 12 January 2001).

### ***Force majeure***

No Party shall be liable for failures or have the right to terminate this licence for any delay or failure in performance under this licence if such delay or failure is caused by force majeure.

The non-performing Party shall inform the other Party in writing as soon as is practicable about the force majeure circumstances specifying the nature and extent of the circumstances. The non-performing party has no liability in respect of the performance of such of its obli-

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gations as are prevented by the force majeure events during the continuation of such events, and for such time after they cease as is necessary for that party, using all reasonable endeavours, to commence its affected operations in order for it to perform its obligations.

Force majeure shall mean any cause preventing a party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the party so prevented or of any other party), act of God, war, riot, civil commotion, act of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

### ***Conflict resolution***

In the event of any dispute over the licence, the parties shall attempt to solve the issue by negotiations. Either Party may suspend the Licence until the dispute is resolved.

In the event of the said issues not being solved within 3 months from the start of the negotiations, the parties may bring the issue to the applicable court of law.

## ***Specific terms for spatial data sets***

### ***Acknowledgement***

In case of derived data sets the user will document the source of the data by including the relevant information in the metadata:

"Data provided by: [name of organisation, year]", or in the case of multiple data sources: "Data provided by: [name of organisation 1, year], [name of organisation 2, year], ...".

The user will acknowledge the source by indicating:

[Name of the organisation, year], or if there are multiple sources and it is not practical to name them all, the following should be stated: "Data licensed under the INSPIRE licence" or "Includes data licensed under the INSPIRE licence"

### ***Termination***

This is a perpetual licence and cannot be terminated.

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## **Annex B.2 Basic INSPIRE service level agreement for spatial data services**

### **Preamble**

**Considering** that under Article 17(8) of Directive 2007/2/EC (INSPIRE), Member States or their public authorities shall enable the institutions and bodies of the Community to gain access to spatial data sets and services under harmonised conditions, and to exchange and use those sets and services, for the purposes of public tasks that may have an impact on the environment.;

**Considering** that a common structure and terminology of agreements can play a role in stimulating the provision of spatial data sets and services under harmonised conditions.

**Whereas** the terms of this agreement always must be considered to be in harmony with Directive 2007/2/EC and its implementing rules.

The subject (as defined below) is provided under the terms of this agreement. By exercising any rights to the product provided here, the user accepts and agrees to be bound by this agreement.

### **Definitions**

The Definitions from Article 3 of Directive 2007/2/EC (INSPIRE) and supplementary definitions

Spatial data	any data with a direct or indirect reference to a specific location or geographical area (Article 3(2) of Directive 2007/2/EC (INSPIRE))
Spatial data set	an identifiable collection of spatial data (Article 3(3) of Directive 2007/2/EC (INSPIRE))
Spatial data services	the operations which may be performed, by invoking a computer application, on the spatial data contained in spatial data sets or on the related metadata (Article 3(4) of Directive 2007/2/EC (INSPIRE))
Public authority	(a) any government or other public administration, including public advisory bodies, at national, regional or local level;  (b) any natural or legal person performing public administrative functions under national law, including specific duties, activities or services in relation to the environment; and  (c) any natural or legal person having public responsibilities or functions, or providing public services relating to the environment under the control of a body or person falling within (a) or (b). (Article 3(9) of Directive 2007/2/EC (INSPIRE))
Third party	Any natural or legal person other than a public authority.
Supplier	The public authority that provides access to the Subject under the terms of this agreement
User	The institution or body of the Community that obtains the right to use the Subject under the terms of this agreement
Public task (of the institution or body of the community)	The development, implementation and monitoring of policies as defined by the EC Treaty and subsequent Community legislation
Major Emergency	Any situation which may have an adverse impact on people, the environment or property and which may result in a call for assistance under the Mechanism in Article 3 of Council Decision 2007/779/EC, Euratom of 8 November 2007 establishing a Community Civil Protection

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## Mechanism

### **Subject**

The spatial data services provided under this agreement are hereafter referred to as the Subject.

The spatial data service(s) provided under this agreement are defined in Directive 2007/2/EC.

### **Grant**

The supplier grants the user a non-exclusive and non-transferable agreement to use the Subject according to the terms of Directive 2007/2/EC (INSPIRE) and Commission Regulation (EU) No 268/2010 of 29 March 2010 (the Regulation).

Use for any purpose other than permitted by this agreement is expressly prohibited without the prior written permission of the supplier, who in its sole discretion may deny such permission or claim a charge for it.

### **Allowed use**

5. Institutions or bodies of the Community may make spatial data services available to contractors acting on their behalf.
6. Where a spatial data service has been made available pursuant to paragraph 1, the party who received it may not make the spatial data service available to any other party without the written consent of the original service provider.
7. The spatial data service may only be used for activities where the activity may have an impact on the environment and the purpose of those activities is a public task of the institution or body of the Community.
8. Public access may be allowed to the spatial data service, without unnecessarily duplicating the original spatial data service from the Member State, or any service derived from it.

### **Unauthorised use**

The Parties shall make every possible effort to avoid unauthorised use of the Subject.

### **Warranties**

The supplier warrants to the user that to the best of its knowledge it has the authority and power to grant the rights granted under this agreement, has no reason to believe that the use of the Subject could infringe any other entity's rights and is not aware of any claim alleging that such infringement exists.

The supplier does not warrant that the Subject will meet the requirements of the user, unless this is stated specifically or follows from national law. Neither does the supplier warrant that its operation will be uninterrupted or error free.

Except as expressly provided in this agreement, there are no conditions, warranties or other terms binding on the supplier with respect to the actions contemplated hereunder. Any condition, warranty or other term in this regard which might otherwise be implied or incorporated into this Agreement, whether by statute, common law or otherwise, is, insofar as it is lawful to do so, hereby excluded.

### **Security**

The User shall maintain adequate security measures to protect the integrity and security of the Subject. The User shall notify the Supplier of any breach or suspected breach of such security measures.

### **Liability**

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The Subject is provided on “as is” basis, without warranty of any kind, either expressed or implied, except as otherwise provided in this Agreement. No oral or written advice given by the supplier or its dealers, distributors, agents or employees creates a warranty or in any way increases supplier’s liability.

Neither of the Parties shall be liable for any indirect damage. The supplier shall not be liable for any damage arising out of reliance upon, use or inability to use the Subject.

The supplier shall not be liable for any harm that may be caused by the transmission of a computer virus, worm or other such computer program.

This clause does not exclude liability for the supplier where this is prescribed by national law.

The supplier will not be liable for any lack of service caused by the network of the user, except as expressly provided for in this agreement.

***Pricing and payment***

The agreement is free of charge.

***Access and delivery***

The Supplier shall ensure that the User gets access to the Subject in a timely and efficient manner, according to the terms of Commission Regulation (EU) No 268/2010 and this agreement.

The Supplier undertakes to ensure that independent of the provisions agreed to for access, the User can get access to the Subject without delay in major emergencies with and impact on the environment.

***Processing of personal data***

The user undertakes to process personal data in accordance with Regulation No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the Community and on the free movement of such data (OJ L 8, 12 January 2001).

***Force majeure***

No Party shall be liable for failures or have the right to terminate this agreement for any delay or failure in performance under this agreement if such delay or failure is caused by force majeure.

The non-performing Party shall inform the other Party in writing as soon as is practicable about the force majeure circumstances specifying the nature and extent of the circumstances. The non-performing party has no liability in respect of the performance of such of its obligations as are prevented by the force majeure events during the continuation of such events, and for such time after they cease as is necessary for that party, using all reasonable endeavours, to commence its affected operations in order for it to perform its obligations.

Force majeure shall mean any cause preventing a party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the party so prevented or of any other party), act of God, war, riot, civil commotion, act of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

***Conflict resolution***

In the event of any dispute over the agreement, the parties shall attempt to solve the issue by negotiations. Either Party may suspend the agreement until the dispute is resolved.

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In the event of the said issues not being solved within 3 months from the start of the negotiations, the parties may bring the issue to the applicable court of law.

## ***Specific terms for spatial data services***

### ***Acknowledgement***

The user will document the source of the service by including the relevant information in any description and the metadata of the service:

“Service provided by: [name of organisation]”, or in the case of multiple services: “Services provided by: [name of organisation 1], [name of organisation 2], ...”.

The user will acknowledge the source by including an attribution statement:

“Service provided by: [name of organisation]” or if there are multiple sources and it is not practicable to name them all, the following should be stated: “Services licensed under the INSPIRE licence” or “Includes services licensed under the INSPIRE licence”

### ***Termination***

This licence can be terminated by the provider at any time, by discontinuing the service.

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## Annex C. Template for a Specific INSPIRE Agreement for datasets and services

The template for a Specific INSPIRE agreement consists of two sub-agreements, a specific INSPIRE licence template for spatial data sets and a template for a specific INSPIRE service level agreement for spatial data services.

The licence and the service level agreement have many parts in common. The parts in common are formatted in black, while [the parts in the licence that are specific for the spatial data sets are formatted in blue](#), and the parts in the service level agreement specific for spatial data services are formatted in green.

These agreements contain options that can be selected. Options are listed between square brackets and are indicated with the word Option.

These agreements contain parts to be filled in. These parts are indicated by square brackets in bold with a text between the brackets that indicates what kind of information should be inserted here.

These agreements contain references to schedules. Schedules can provide further details for the agreement. The schedules are listed in Annex C.3.

If an agreement for spatial data sets is to be made then it is sufficient to take the Specific INSPIRE Licence template, to fill in the necessary parts and to select any options or to fill out any schedule as needed.

If an agreement concerns spatial data services then the template for a Specific INSPIRE Service Level Agreement should be taken and again the necessary text needs to be filled in, any option wanted need, and any schedule needed should be filled out.

If the agreement should only cover INSPIRE use, without any additional restrictions or rights and should be free of charge then a Basic INSPIRE Agreement can be used.

### Annex C.1 Specific INSPIRE licence template for spatial data sets

#### Preamble

**Considering** that under Article 17(8) of Directive 2007/2/EC (INSPIRE) Member States or their public authorities shall enable the institutions and bodies of the Community to gain access to spatial data sets and services under harmonised conditions, and to exchange and use those sets and services, for the purposes of public tasks that may have an impact on the environment.

**Considering** that the **[name of Community party]** is an institution or body of the Community.

**Considering** that any charges must be fully compatible with the terms of Article 17(3) of Directive 2007/2/EC and Commission Regulation (EU) No 268/2010.

**Considering** that a common structure and terminology of licences can play a role in stimulating the provision of spatial data sets and services under harmonised conditions.

**Whereas** the terms of this licence always must be considered to be in harmony with the Directive 2007/2/EC and its implementing rules

*The parties have agreed to the following licence:*

#### Parties

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The parties are **[MS or public authority]** represented by **[Name of the representative]**, with official address **[...]**, hereafter called 'the supplier', who is a supplier of data in **[Member State]** under Directive 2007/2/EC (INSPIRE);

And **[institution or body of the Community]**, represented by **[Name of the representative]**, with official address **[...]**, hereafter called 'the user', who is an institution or body of the Community.

### **Definitions**

The Definitions from Article 3 of the Directive 2007/2/EC (INSPIRE) and supplementary definitions

Spatial data	any data with a direct or indirect reference to a specific location or geographical area (Article 3(2) of Directive 2007/2/EC (INSPIRE))
Spatial data set	an identifiable collection of spatial data (Article 3(3) of Directive 2007/2/EC (INSPIRE))
Spatial data services	the operations which may be performed, by invoking a computer application, on the spatial data contained in spatial data sets or on the related metadata (Article 3(4) of Directive 2007/2/EC (INSPIRE))
Public authority	(a) any government or other public administration, including public advisory bodies, at national, regional or local level;  (b) any natural or legal person performing public administrative functions under national law, including specific duties, activities or services in relation to the environment; and  (c) any natural or legal person having public responsibilities or functions, or providing public services relating to the environment under the control of a body or person falling within (a) or (b). (Article 3(9) of Directive 2007/2/EC (INSPIRE))
Third party	Any natural or legal person other than a public authority.
Supplier	The public authority that provides access to the Subject under the terms of this Licence
User	The institution or body of the Community that obtains the right to use the Subject under the terms of this Licence
Public task (of the institution of body of the Community)	The development, implementation and monitoring of policies and related activities as defined by the EC Treaty and subsequent Community legislation
Major Emergency	Any situation which may have an adverse impact on people, the environment or property and which may result in a call for assistance under the Mechanism" in Article 3 of Council Decision 2007/779/EC, Euratom of 8 November 2007 establishing a Community Civil Protection Mechanism

### **Subject**

The details of the spatial data sets, hereafter referred to as the Subject, are provided in **Schedule 1** to this licence.

The spatial data set(s) provided under this licence equate to, include, or are components of the themes listed in Annexes I, II, III of Directive 2007/2/EC.

### **Grant**

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The supplier grants the user a non-exclusive and non-transferable licence to use the Subject according to the terms of Directive 2007/2/EC (INSPIRE) and Commission Regulation (EU) No 268/2010 of 29 March 2010 (the Regulation).

Use for any purpose other than permitted by this Licence is expressly prohibited without the prior written permission of the supplier, who in its sole discretion may deny such permission or claim a separate additional charge for it.

#### ***Allowed use***

1. Institutions or bodies of the Community may make spatial data sets available to contractors acting on their behalf.
2. Where a spatial data set has been made available pursuant to paragraph 1, the party who received it may not make the spatial data set available to any other party without the written consent of the original data provider.
3. The spatial data set may only be used for activities where the activity may have, an impact on the environment and the purpose of those activities is a public task of the institution or body of the Community.

#### ***(Optional)***

4. Additional use is allowed as specified in **Schedule 2.**]

#### ***Public access and use***

Option 1. The institution or body of the Community may make any data derived from the Subject available to the public with no restrictions and at no charge.

Option 2: Where restrictions on public access are allowed under the Directive 2007/2/EC (INSPIRE) or under national legislation **[national legislation to be specified here]:**

Option 2a. The institution or body of the Community may make the Subject and any data derived from it available to the public under the conditions defined in **Schedule 3.**

Option 2b. The institution or body of the Community may not make the Subject or any data derived from it available to the public.

Optional if Options 2a selected:

When public access is allowed, an End User Licence will be used as specified in **Schedule 4]**

#### ***Unauthorised use***

The Parties shall make every possible effort to avoid unauthorised use of the Subject.

#### ***Acknowledgement of intellectual property rights (optional)***

##### **Option 1**

In case of derived data sets the user will document the source of the data by including the relevant information in the metadata:

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"Data provided by: [name of organisation, year]", or in the case of multiple data sources: "Data provided by: [name of organisation 1, year], [name of organisation 2, year], ...".

The user will acknowledge the source by indicating:

[Name of the organisation, year], or if there are multiple sources and it is not practical to name them all, the following should be stated: "Data licensed under the INSPIRE licence" or "Includes data licensed under the INSPIRE licence"

Option 2

The user will place acknowledgements of the supplier's intellectual property rights as defined in **Schedule 6 a**.

### **Warranties**

The supplier warrants to the user that to the best of its knowledge it has the authority and power to grant the rights granted under this Licence, has no reason to believe that the use of the Subject could infringe any other entity's rights and is not aware of any claim alleging that such infringement exists.

The supplier does not warrant that the Subject will meet the requirements of the user, unless this is stated specifically or follows from national law. Neither does the supplier warrant that its operation will be uninterrupted or error free.

Except as expressly provided in this licence, there are no conditions, warranties or other terms binding on the supplier with respect to the actions contemplated hereunder. Any condition, warranty or other term in this regard which might otherwise be implied or incorporated into this Licence, whether by statute, common law or otherwise, is, insofar as it is lawful to do so, hereby excluded.

### **Security**

The User shall maintain adequate security measures to protect the integrity and confidentiality of the Subject. The User shall notify the Supplier of any breach or suspected breach of such security measures.

[Optional: Given that the access to spatial data sets cannot be allowed, due to any exemption provided for by law, additional security measures need to be taken in order to allow access anyway:

The User shall implement the measures that are described in **Schedule 7**.]

### **Liability**

The Subject is provided on "as is" basis, without warranty of any kind, either expressed or implied, except as otherwise provided in this Licence. No oral or written advice given by the supplier or its dealers, distributors, agents or employees creates a warranty or in any way increases supplier's liability.

Neither of the Parties shall be liable for any indirect damage. The supplier shall not be liable for any damage arising out of reliance upon, use or inability to use the Subject.

The supplier shall not be liable for any harm that may be caused by the transmission of a computer virus, worm or other such computer program.

This clause does not exclude liability for the supplier where this is prescribed by national law.

### **Quality & Conformance**

#### **Option 1: Data quality**

The quality of data sets is in accordance with the corresponding descriptions and/or specifications referred by the data owner/licensor in **schedule 8**.

#### **Option 2: Spatial data set: INSPIRE conformance**

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The quality of data sets is in conformance with the requirements of the INSPIRE Directive and the corresponding Commission regulation regarding interoperability of spatial data sets and services.

### ***Pricing and payment***

[Option 1. The licence is free of charge.

Option 2. The licence will be charged for as described in **Schedule 10.** ]

### ***Access and delivery***

The Supplier shall ensure that the User gets access to the Subject in a timely and efficient manner, according to the terms of this licence.

The Supplier undertakes to ensure that independent of the provisions agreed to for access, the User can get access to the Subject without delay in major emergencies with an impact on the environment.

Arrangements for access and delivery, both in normal and in major emergencies, are detailed in **Schedule 11.**

### ***Processing of personal data***

The user undertakes to process personal data in accordance with Regulation 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the Community and on the free movement of such data (OJ L 8, 12 January 2001).

### ***Assignment, sub-licensing***

This Licence may not be assigned. The user has no rights to sub-license the Subject.

### ***Sub-contracting***

Where the User contracts work which requires use of the Subject to another entity, the Subject may be supplied under the following conditions:

- The contractor shall be bound by the same obligations as the user under this agreement;
- The contractor shall not be given the power to grant rights to the Subject;
- The contractor shall not have any rights to use the Subject for purposes beyond the contract;
- The contractor shall have no right to retain or use the subject after the end of the contract or this Licence.

### ***Force majeure***

No Party shall be liable for failures or have the right to terminate this licence for any delay or failure in performance under this licence if such delay or failure is caused by force majeure.

The non-performing Party shall inform the other Party in writing as soon as is practicable about the force majeure circumstances specifying the nature and extent of the circumstances. The non-performing party has no liability in respect of the performance of such of its obligations as are prevented by the force majeure events during the continuation of such events, and for such time after they cease as is necessary for that party, using all reasonable endeavours, to commence its affected operations in order for it to perform its obligations.

Force majeure shall mean any cause preventing a party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the party so prevented or of

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any other party), act of God, war, riot, civil commotion, act of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

### **Contact persons**

Optional: [].

### **Conflict resolution**

In the event of any dispute over the licence, the parties shall attempt to solve the issue by negotiations. Either Party may suspend the Licence until the dispute is resolved.

In the event of the said issues not being solved within 3 months from the start of the negotiations, the parties may bring the issue to the applicable court of law.

### **Applicable law and jurisdiction**

Any dispute rising that cannot be solved by negotiation is to be handled as a dispute under the law of [insert relevant jurisdiction].

### **Termination**

This license can be terminated by the Parties. Termination cannot be without a reasonable cause.

If there is a material breach of contract, the licence can be terminated with immediate effect.

Option 1: This Licence can be terminated by the Parties with 60 days written notice by registered mail.

Option 2: This Licence will terminate at the end of the licence period as specified in **Schedule 13**.

Option 3: Upon termination of the Licence any data will be deleted by the User if not otherwise licensed for use.

Option 4: This licence is perpetual.

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## **Annex C.2 Template for a Specific INSPIRE Service Level Agreement for spatial data services**

### **Preamble**

**Considering** that under Article 17(8) of Directive 2007/2/EC (INSPIRE) Member States or their public authorities shall enable the institutions and bodies of the Community to gain access to spatial data sets and services under harmonised conditions, and to exchange and use those sets and services, for the purposes of public tasks that may have an impact on the environment.

**Considering** that the (name of Community party) is an institution or body of the Community.

**Considering** that any charges must be fully compatible with the terms of Article 17(3) of Directive 2007/2/EC and Commission Regulation (EU) No 268/2010.

**Considering** that a common structure and terminology can play a role in stimulating the provision of spatial data sets and services under harmonised conditions.

**Whereas** the terms of this agreement always must be considered to be in harmony with the Directive 2007/2/EC and its implementing rules

*The parties have agreed to the following agreement:*

### **Parties**

The parties are **[MS or public authority]** represented by **[Name of the representative]**, with official address **[...]**, hereafter called 'the supplier', who is a supplier of data and services in **[Member State]** under Directive 2007/2/EC (INSPIRE);

And **[institution or body of the Community]** represented by **[Name of the representative]**, with official address **[...]**, hereafter called 'the user', who is an institution or body of the Community.

### **Definitions**

The Definitions from Article 3 of the Directive 2007/2/EC (INSPIRE) and supplementary definitions

Spatial data	any data with a direct or indirect reference to a specific location or geographical area (Article 3(2) of Directive 2007/2/EC (INSPIRE))
Spatial data set	an identifiable collection of spatial data (Article 3(3) of Directive 2007/2/EC (INSPIRE))
Spatial data services	the operations which may be performed, by invoking a computer application, on the spatial data contained in spatial data sets or on the related metadata (Article 3(4) of Directive 2007/2/EC (INSPIRE))
Public authority	(a) any government or other public administration, including public advisory bodies, at national, regional or local level;  (b) any natural or legal person performing public administrative functions under national law, including specific duties, activities or services in relation to the environment; and  (c) any natural or legal person having public responsibilities or functions, or providing public services relating to the environment under the control of a body or person falling within (a) or (b). (Article 3(9) of Directive 2007/2/EC (INSPIRE))
Third party	Any natural or legal person other than a public authority.
Supplier	The public authority that provides access to the Subject under the terms of this agreement

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User	The institution or body of the Community that obtains the right to use the Subject under the terms of this agreement
Public task (of the institution of body of the Community)	The development, implementation and monitoring of policies and related activities as defined by the EC Treaty and subsequent Community legislation
Major Emergency	Any situation which may have an adverse impact on people, the environment or property and which may result in a call for assistance under the Mechanism" in Article 3 of Council Decision 2007/779/EC, Euratom of 8 November 2007 establishing a Community Civil Protection Mechanism

### **Subject**

The details of the spatial data services, hereafter referred to as the Subject, are provided in **Schedule 1** to this agreement.

The spatial data service(s) provided under this agreement are defined in Directive 2007/2/EC.

### **Grant**

The supplier grants the user a non-exclusive and non-transferable agreement to use the Subject according to the terms of Directive 2007/2/EC (INSPIRE) and Commission Regulation (EU) No 268/2010 of 29 March 2010 (the Regulation).

Use for any purpose other than permitted by this agreement is expressly prohibited without the prior written permission of the supplier, who in its sole discretion may deny such permission or claim a separate additional charge for it.

### **Allowed use**

1. Institutions or bodies of the Community may make spatial data services available to contractors acting on their behalf.
2. Where a spatial data service has been made available pursuant to paragraph 1, the party who received it may not make the spatial data service available to any other party without the written consent of the original data or service provider.
3. The spatial data service may only be used for activities where the activity may have, an impact on the environment and the purpose of those activities is a public task of the institution or body of the Community.

### **(Optional)**

[4. Additional use is allowed as specified in **Schedule 2**.]

### **Public access and use**

[Option 1. The institution or body of the Community may make any services derived from the Subject available to the public with no restrictions and at no charge.

Option 2: Where restrictions on public access are allowed under the Directive 2007/2/EC (INSPIRE) or under national legislation **[national legislation to be specified here]**:

Option 2a. The institution or body of the Community may make the Subject and any services derived from it available to the public under the conditions defined in **Schedule 3**.

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Option 2b. The institution or body of the Community may not make the Subject or any services derived from it available to the public.

Optional if Options 2a selected:

When public access is allowed, an End User Agreement will be used as specified in **Schedule 4**

Optional if Options 2a selected:

The User will impose technical limitations on the services, preventing re-use of the Subject. These limitations are defined in **Schedule 5.**

### ***Unauthorised use***

The Parties shall make every possible effort to avoid unauthorised use of the Subject.

### ***Acknowledgement of intellectual property rights (optional)***

#### ***Option 1***

The user will document the source of the service by including the relevant information in any description and the metadata of the service:

“Service provided by: [name of organisation]”, or in the case of multiple services: “Services provided by: [name of organisation 1], [name of organisation 2], ...”.

The user will acknowledge the source by including an attribution statement:

“Service provided by: [name of organisation]” or if there are multiple sources and it is not practicable to name them all, the following should be stated: “Services licensed under the INSPIRE licence” or “Includes services licensed under the INSPIRE licence”

#### ***Option 2***

The user will place acknowledgements of the supplier’s intellectual property rights as defined in **Schedule 6.**

### ***Warranties***

The supplier warrants to the user that to the best of its knowledge it has the authority and power to grant the rights granted under this agreement, has no reason to believe that the use of the Subject could infringe any other entity’s rights and is not aware of any claim alleging that such infringement exists.

The supplier does not warrant that the Subject will meet the requirements of the user, unless this is stated specifically or follows from national law. Neither does the supplier warrant that its operation will be uninterrupted or error free.

Except as expressly provided in this agreement, there are no conditions, warranties or other terms binding on the supplier with respect to the actions contemplated hereunder. Any condition, warranty or other term in this regard which might otherwise be implied or incorporated into this agreement, whether by statute, common law or otherwise, is, insofar as it is lawful to do so, hereby excluded.

### ***Security***

The User shall maintain adequate security measures to protect the integrity and confidentiality of the Subject. The User shall notify the Supplier of any breach or suspected breach of such security measures.

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[Optional: Given that the access to spatial data services cannot be allowed, due to any exemption provided for by law, additional security measures need to be taken in order to allow access anyway:

The User shall implement the measures that are described in **Schedule 7.**]

### **Liability**

The Subject is provided on “as is” basis, without warranty of any kind, either expressed or implied, except as otherwise provided in this agreement. No oral or written advice given by the supplier or its dealers, distributors, agents or employees creates a warranty or in any way increases supplier’s liability.

Neither of the Parties shall be liable for any indirect damage. The supplier shall not be liable for any damage arising out of reliance upon, use or inability to use the Subject.

The supplier shall not be liable for any harm that may be caused by the transmission of a computer virus, worm or other such computer program.

This clause does not exclude liability for the supplier where this is prescribed by national law.

The supplier will not be liable for any lack of service caused by the network of the user, except as expressly provided in this agreement.

### **Quality & Conformance**

#### **[Option 1: Service quality commitment (optional):**

The service quality is in accordance with corresponding descriptions and/or specifications referred to in the **schedule 9** by the data owner/licensor.

#### **Option 2 Service quality in terms of INSPIRE**

The service quality is in conformance with the requirements of the INSPIRE Directive and the corresponding Commission regulation regarding the Network Services.

#### **Option 3: Service quality beyond INSPIRE**

##### Performance

The normal situation represents periods out of peak load. It is set at **[insert the percentage]** % of the time.

The response time for sending the initial response to a discovery service request shall be maximum **[insert the number of seconds]** seconds in normal situation.

For a 470 Kilobytes image (e.g. 800 × 600 pixels with a colour depth of 8 bits), the response time for sending the initial response to a Get Map Request to a view service shall be maximum **[insert the number of seconds]** seconds in normal situation.

For the Get Download Service Metadata operation, the response time for sending the initial response shall be maximum **[insert the number of seconds]** seconds in normal situation.

For the Get Spatial Data Set operation and for the Get Spatial Object operation, and for a query consisting exclusively of a bounding box, the response time for sending the initial response shall be maximum **[insert the number of seconds]** seconds in normal situation then, and still in normal situation, the download service shall maintain a sustained response greater than **[insert the number of Megabytes]** Megabytes per second or greater than **[insert the number of Spatial Objects]** Spatial Objects per second.

For the Describe Spatial Data Set operation and for the Describe Spatial Object Type operation, the response time for sending the initial response shall be maximum **[insert the number of seconds]** seconds in normal situation then, and still in normal situation, the download service shall maintain a sustained response greater than **[insert the number of Megabytes]**

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Megabytes per second or greater than **[insert the number of Spatial Objects]** of Spatial Objects per second.

#### Capacity

The minimum number of simultaneous requests to a discovery service to be served in accordance with the quality of service performance criteria shall be **[insert the number of seconds]** per second.

The minimum number of simultaneous service requests to a view service to be served in accordance with the quality of service performance criteria shall be **[insert the number of seconds]** per second.

The minimum number of simultaneous requests to a download service to be served in accordance with the quality of service performance criteria shall be **[insert the number of requests]** requests per second. The number of requests processed in parallel may be limited to **[insert the number of seconds]**.

The minimum number of simultaneous requests to a transformation service to be served in accordance with the quality of service performance criteria shall be **[insert the number of seconds]** requests per second.

#### Availability

The probability of a network service to be available shall be **[insert the percentage]** % of the time.']

#### ***Pricing and payment***

[Option 1. The agreement is free of charge.

Option 2. The agreement will be charged for as described in **Schedule 10.** ]

#### ***Access and delivery***

The Supplier shall ensure that the User gets access to the Subject in a timely and efficient manner, according to the terms of this agreement.

The Supplier undertakes to ensure that independent of the provisions agreed to for access, the User can get access to the Subject without delay in major emergencies with an impact on the environment.

Arrangements for access and delivery, both in normal and in major emergencies, are detailed in **Schedule 12.**

#### ***Processing of personal data***

The user undertakes to process personal data in accordance with Regulation 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the Community and on the free movement of such data (OJ L 8, 12 January 2001).

#### ***Assignment, sub-licensing***

This agreement may not be assigned. The user has no rights to sub-license the Subject.

#### ***Sub-contracting***

Where the User contracts work which requires use of the Subject to another entity, the Subject may be supplied under the following conditions:

- The contractor shall be bound by the same obligations as the user under this agreement;
- The contractor shall not be given the power to grant rights to the Subject;

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- The contractor shall not have any rights to use the Subject for purposes beyond the contract;

### ***Force majeure***

No Party shall be liable for failures or have the right to terminate this agreement for any delay or failure in performance under this agreement if such delay or failure is caused by force majeure.

The non-performing Party shall inform the other Party in writing as soon as is practicable about the force majeure circumstances specifying the nature and extent of the circumstances. The non-performing party has no liability in respect of the performance of such of its obligations as are prevented by the force majeure events during the continuation of such events, and for such time after they cease as is necessary for that party, using all reasonable endeavours, to commence its affected operations in order for it to perform its obligations.

Force majeure shall mean any cause preventing a party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the party so prevented or of any other party), act of God, war, riot, civil commotion, act of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

### ***Contact persons***

Optional: [].

### ***Conflict resolution***

In the event of any dispute over the agreement, the parties shall attempt to solve the issue by negotiations. Either Party may suspend the agreement until the dispute is resolved.

In the event of the said issues not being solved within 3 months from the start of the negotiations, the parties may bring the issue to the applicable court of law.

### ***Applicable law and jurisdiction***

Any dispute arising that cannot be solved by negotiation is to be handled as a dispute under the law of [insert relevant jurisdiction].

### ***Termination***

This license can be terminated by the Parties. Termination cannot be without a reasonable cause.

If there is a material breach of contract, the agreement can be terminated with immediate effect.

[Option 1: This agreement can be terminated by the Parties with 60 days written notice by registered mail.

Option 2: This agreement will terminate at the end of the agreement period as specified in **Schedule 13**.

Option 3: This service can be changed or terminated at any time by the service provider, on such notice that is reasonable in the circumstances.

Option 4: This service can be terminated by the provider with **[insert the number of days]** days written notice.

Option 5: In the event of this service being changed by the service provider, the Licensee is entitled to terminate this agreement from that the same time.

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Option 6: Upon termination of this agreement the Licensee shall immediately cease the use of the service [and shall delete all full or partial copies, including caches of data and any saved data originating from the services.

Option 6a: and provide the Licensor with written confirmation of deletion.]

Option 7: Information about any impending change can be obtained as described in **schedule 14.**]

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## ***Annex C.3: Schedules***

This Annex contains the schedules referenced in the licence and in the service level agreement. For each schedule there is either a description of what it should contain or a list of options that should be reported here.

### **Schedule 1 – Subject**

This schedule will include:

- Name of Subject(s)
- Update Details
- Technical details

### **Schedule 2 – Extended allowed use (optional)**

This schedule will include details and description of the additional use allowed by the Licence/Service Level Agreement beyond INSPIRE use.

### **Schedule 3 – Additional conditions under which public access may be allowed (optional)**

This schedule will include the amendments required. The may include, but not be restricted to, a reduction in accuracy or resolution, removal of specified sensitive records, or restrictions on the amount of data which can be viewed or downloaded.

### **Schedule 4 – End User Licence/Agreement for public access (optional)**

This schedule will contain the Licence/Service Level Agreement to be used.

### **Schedule 5 – Technical Restrictions on services (optional)**

This schedule will include a description of the restrictions required.

### **Schedule 6 – Acknowledgements of intellectual property rights (optional)**

This schedule will include details of, for example, the content and placement of statements, watermarks etc.

### **Schedule 7 - Additional security (optional)**

If full access to spatial data sets or services cannot be allowed, due to any exemption provided for by law, additional security measures need to be taken in order to allow access anyway:

This schedule will include one of the following options:

[Option 1: Level 1: Only for use by staff of the User.

Option 2: Level 2: Only for use by authorised staff of the User.

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Option 3: Level 3: Only for use by authorised staff of the User in a closed network.

Option 4: Level 4: Only for use by authorised staff of the User on standalone computers.

Option 5: Other level of security. If this option is selected, the Schedule will contain details of the security required.]

### **Schedule 8 – Data quality**

This schedule will contain the spatial data quality

### **Schedule 9 – Service quality commitment**

This schedule will contain the service quality commitment

### **Schedule 10 – Pricing and payment (optional)**

This schedule will include:

- Details of the charges
  - Charges applicable
  - VAT and other taxes
  - Currency
- Rules of payment
- Invoicing, payment arrangements and refunding.

### **Schedule 11 – Delivery of spatial data sets**

This schedule will include;

- Delivery Details
- Access arrangements in major emergencies

### **Schedule 12 – Delivery of spatial data services**

This schedule will include details on the process for gaining access, and may include authentication and authorisation;

- Process for gaining access (website, steps to gain access, account creation, select agreement, select service)
- Access arrangements in normal conditions (user authentication with name and password, use of browser cookie, use of token, GeoDRM, authentication key, simultaneous connections)
- [(Optional) Access arrangements in major emergencies]

### **Schedule 13 – Licence/Agreement Period (optional)**

This schedule will include:

- Licence/Agreement period

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- End date.

#### **Schedule 14 – Termination of services**

This schedule will include how to obtain information about any impending change in the provision of this service.