Standard Data Licence Agreement between Airservices Australia and the Customer

1 Background

A. Airservices Australia (**Airservices**) is a body corporate established by the Air Services Act 1995 (Cth) that provides a number of services and facilities for certain purposes including the purpose of Australia or another country giving effect to the Chicago Convention and purposes relating to the safety, regularity or efficiency of air navigation. Pursuant to the above Act, Airservices may provide its services and facilities both within and outside Australian territory.

B. Airservices also produces, compiles and publishes the Standard Data. Each data set and product group forming part of the Standard Data includes individual works.

C. The production, compilation and publication of the Standard Data is essential for the safe management of Australia's airspace. Airservices has expended, and continues to expend, substantial effort, skill, labour and resources in the authorship, gathering, collection, receipt, verification, selection, presentation, and arrangement (as the case may be) of the Standard Data and the individual works comprising it.

D. Copyright subsists in the data sets and product groups forming part of the Standard Data, and in the various individual works which comprise those data sets and product groups, and, subject to any interest held by third parties, Airservices owns that copyright.

E. The Customer wants Airservices to supply the Standard Data.

F. Airservices agrees to supply the Standard Data on the terms and conditions of this Agreement.

2 Term

The term of this Agreement starts on the Commencement Date and continues:

(a) for 12 months after Airservices initially supplies the Standard Data to the Customer (**Initial Subscription**); or

(b) if the Subscription is renewed in accordance with clause 5.4, until the expiry of the relevant Renewed Subscription,

unless terminated earlier in accordance with this Agreement (the **Term**).

3 Acceptance

3.1 Acceptance

(a) This Agreement is available for acceptance by a person who has generated (or caused to be generated) a Standard Data Order Form to purchase Standard Data using the Data Portal.

(b) By You indicating agreement to or acceptance of this Agreement through the Data Portal, or submitting the Standard Data Order Form:

(i) You agree that You understand the terms and conditions of this Agreement;

(ii) You accept the terms and conditions of this Agreement on behalf of Yourself and on behalf of the Customer;

(iii) You and the Customer are bound to the terms of this Agreement and, subject to clause 3.1(e), the Customer is bound to purchase the Standard Data specified in the Standard Data Order Form;

(iv) You warrant that You have due authority to bind the Customer to this Agreement; and

(v) You warrant that there are no limitations or restrictions, legal or otherwise, that bind or otherwise affect You or the Customer, that will prevent You and the Customer from giving full force and effect to the rights granted or promises or assurances given in this Agreement.

(c) You and the Customer acknowledge and agree that any act of accessing, downloading, Using, Enhancing or Commercialising the Standard Data binds You and the Customer to the terms of this Agreement, and constitutes a representation by the Customer that You and the Personnel accessing, downloading, Using, Enhancing or Commercialising the Standard Data are duly authorised to bind the Customer to this Agreement.

(d) Following Airservices' review of the Standard Data Order Form, and prior to issuing the Initial Subscription invoice, Airservices may decline to supply the Standard Data, and this Agreement will then terminate.

(e) If Airservices exercises its rights under clause 3.1(d), Airservices may, in its absolute discretion, propose an alternative form of licence Agreement more appropriate to the Customer's proposed Use of the Standard Data.

3.2 Notification of terms and compliance

(a) You must bring this Agreement to the attention of the Customer.

(b) You and the Customer acknowledge and agree that you have had adequate notice of, and have read, the terms of this Agreement.

(c) You and the Customer acknowledge and agree that the Customer must ensure that its Personnel and sub licensees comply with the terms of this Agreement.

(d) Once submitted, the Standard Data Order Form forms part of this Agreement (as amended by any Renewed Subscription documentation).

4 Subscription to Standard Data

For the Subscription Fees, and subject to the terms and conditions of this Agreement, Airservices will supply the Customer with access to the Standard Data in the Format, in accordance with the relevant Data Product Specification and at the frequency specified in the Standard Data Product Groups Table for that type of data for a period of 12 months (each a **Subscription**).

5 Payment, invoicing and renewal

5.1 Payments required

(a) Three types of payment are payable under this Agreement:

(i) Subscription Fees for the supply of access to the Standard Data and licensing of the Standard Data; and

(ii) either:

(A) Royalties payable in relation to Commercialised Products in accordance with clause 5.6; or

(B) the applicable End User Charge,

whichever is the greater.

(b) The Customer must pay all Subscription Fees and Royalties or End User Charges due to Airservices without set-off or deduction unless otherwise agreed in writing with Airservices.

5.2 Invoicing procedure

(a) Airservices will invoice the Customer annually in advance for the Subscription Fees.

(b) Where Royalties are payable under this Agreement, Airservices will invoice the Customer for the Royalties payable as specified in clause 5.6.

(c) Where End User Charges are payable under this Agreement, Airservices will invoice the Customer for the End User Charges payable as specified in clause 5.7.

(d) Invoices will be addressed to the address for invoices specified in the Standard Data Order Form.

(e) Where applicable, invoices will be in the form of a valid Tax Invoice.

5.3 Initial Subscription

(a) Airservices will issue the invoice for the Initial Subscription to the Customer following the Commencement Date.

(b) The Customer must pay Airservices the Subscription Fees specified in the Initial Subscription invoice (the **Initial Subscription Fees**) by the payment method specified in that invoice within 20 Business Days after the date of issue recorded on the invoice.

(c) Following receipt of the Initial Subscription Fees, Airservices will supply the Customer with a login ID and password to access and download the Standard Data and Data Product Specifications from the Data Portal.

5.4 Renewal Subscription

(a) On 1 July each year, Airservices may increase the Subscription Fees payable by up to 5%. The increased Subscription Fees will apply to the Customer from the next invoice.

(b) Airservices will issue an invoice for a Renewed Subscription to the Customer prior to the end of the then current Subscription.

(c) If the Customer agrees to renew the Subscription, it must pay the Subscription Fees specified in the invoice for the Renewed

Subscription within 20 Business Days after the date of issue recorded on the invoice.

(d) If the Customer does not make payment of an invoice for a Renewed Subscription within 20 Business Days, Airservices may issue a reminder notice to the Customer. If the Customer does not make payment within 10 Business Days of receipt of the reminder notice, its licence to the Standard Data and its access to the Standard Data, including its login ID and password will be revoked and this Agreement will expire.

(e) If the Customer does not wish to have a Renewed Subscription, it need not take any further action. Its licence to the Standard Data and its access to the Standard Data, including its login ID and password will be revoked, and this Agreement will expire.

(f) The Customer acknowledges and agrees that Airservices may vary the terms of this Agreement after the expiry or termination of any Subscription. Otherwise, the terms and conditions of this Agreement continue to apply during the period of any Renewed Subscription.

5.5 Interest on overdue amounts

If the Customer fails to pay Airservices any amount due and payable under this Agreement by the due date, Airservices may invoice, and the Customer must pay to Airservices:

(a) interest on the overdue amount from the date the amount became overdue until the date the amount is paid. The interest is calculated daily and compounded monthly at the rate of 2% per annum above the Commonwealth Bank Overdraft Index Rate (monthly charging cycle) current on the first day of each month; and

(b) legal and other costs, charges and expenses incurred by Airservices or on Airservices' behalf in making, enforcing and doing anything in connection with this Agreement on a full indemnity basis. Amounts paid by the Customer to Airservices after amounts become overdue will be applied first against payment of any legal and other costs, charges and expenses incurred in accordance with this clause, then against the overdue amounts.

5.6 Royalties

(a) This clause 5.6 applies where the Customer Uses Commercialised Products.

(b) Twice a year (by 30 April and 31 October each year), the Customer must complete, and submit to Airservices, a Royalty Calculation Form.

(c) The completed Royalty Calculation Form must calculate the Royalty payable in respect of either:

(i) the approximately six month period since the last Royalty calculation was made; or

(ii) for the first Royalty calculation, the period since the Commencement Date,

(**Royalty Period**), and must be accompanied by written evidence to Airservices' satisfaction clearly substantiating the calculation of the Royalty.

(d) Airservices may either:

(i) accept the Royalty calculation in the Royalty Calculation Form and supporting evidence; or

(ii) not accept the Royalty calculation, and require the Customer to re-calculate the Royalty in accordance with this Agreement, require further information from the Customer supporting its Royalty calculation or conduct an audit or inspection under clause 10.2 (or all or any combination of these).

(e) If the Royalty calculation determined in accordance with clause 5.6(d) is greater than the End User Charge, Airservices will invoice the Customer for payment of the Royalty.

(f) The Customer acknowledges that if a Royalty Calculation Form or related information submitted by the Customer for a given Royalty Period is subsequently found to be incorrect, incomplete or inaccurate, the Customer will be liable to pay Airservices, as a debt due, the difference between the amount of Royalties that would have been payable to Airservices for that Royalty Period had the Royalty Calculation Form or related information been duly prepared and was both accurate and complete, and the amount of Royalties or the End User Charge actually paid for that Royalty Period, plus interest determined in accordance with clause 5.5.

(g) If the Customer does not:

(i) provide the information required under clause 5.6(c) or clause 5.6(d)(ii);

(ii) fulfil its obligations under clause 10; or

(iii) pay the invoice in respect of the Royalty in accordance with clause 5.2,

then Airservices may (without limiting its rights at law):

(iv) terminate the Customer's right to Enhance and/or Commercialise under this Agreement;

(v) revoke the Customer’s licence to Use the Standard Data;

(vi) revoke the Customer’s access to the Standard Data, including its login ID and password;

(vii) determine the Royalty payable by the Customer and require the Customer to pay that amount; and/or

(viii) take legal action against the Customer to recover Royalties that are payable.

(h) The Royalty will remain payable in relation to each Royalty Period in which the Customer generates revenue through Commercialised Products, whether or not that Royalty Period is within the Term.

5.7 End User Charge

(a) This clause 5.7 applies where the Customer:

(i) Uses Commercialised Products;

(ii) sublicences the Standard Data; or

(iii) otherwise distributes or provides access to the Standard Data to any other person or organisation (excluding Authorised Personnel).

(b) Following the exercise of its rights under clause 5.6(d), if Airservices determines that the Royalty payable for a Royalty Period is less than the End User Charge, Airservices will:

(i) during the first two Royalty Periods following the Commencement Date, invoice the Customer for the payment of the End User Charge (the **Initial End User Charge**); and

(ii) for any subsequent Royalty Periods, invoice the Customer for the payment of the End User Charge determined in accordance with clause 5.7(c).

(c) On 1 July each year, Airservices may increase the End User Charge by up to 5%. The increased End User Charge will apply from the next Royalty Period commencing after the date that notice is issued under this clause 5.7(c).

(d) If the Customer does not pay an invoice in respect of an End User Charge in accordance with clause 5.2 then Airservices may (without limiting its rights at law):

(i) terminate the Customer's right to Enhance and/or Commercialise under this Agreement;

(ii) revoke the Customer's licence to Use the Standard Data;

(iii) revoke the Customer's access to the Standard Data, including its login ID and password; and/or

(iv) take legal action against the Customer to recover End User Charge that is payable.

5.8 GST inclusive

(a) Subject to clause 5.8(b), the Subscription Fees, Royalties and End User Charges invoiced for payment will be inclusive of GST.

(b) Where the Customer submits a GST declaration demonstrating that the Standard Data is solely for use outside of Australia or that the Customer is a non-resident of Australia and is not in Australia when the Standard Data is provided, the Subscription Fees, Royalties and End User Charges invoiced for payment will be exclusive of GST on the basis that the supplies under this Agreement are GST free.

(c) Where clause 5.8(b) applies, but the supplies made under this Agreement are subsequently found to result in a taxable supply, the Customer agrees to pay Airservices an additional amount in respect of GST on receipt of a valid Tax Invoice.

5.9 Taxes

Unless expressly specified otherwise (for example in relation to GST):

(a) all amounts payable, consideration provided or monetary limits in this Agreement are exclusive of any Taxes; and

(b) the Customer must pay all Taxes arising in respect of this Agreement (other than Taxes arising in respect of any gain made by Airservices under this Agreement).

5.10 Withholding

If the Customer is required by law to deduct or withhold an amount from any payment made to Airservices on account of any Tax so that Airservices would not receive the full amount of the payment for its own benefit on the due date for payment then:

(a) the Customer must:

(i) make the required deduction or withholding;

(ii) pay the appropriate Government agency the full amount of that deduction or withholding in accordance with the relevant law; and

(iii) deliver to Airservices the receipt for that payment; and

(b) the amount required to be paid by the Customer to Airservices under this Agreement will be increased so that after the deduction or withholding is made Airservices still receives the full amount which it would have received had no deduction or withholding been made.

5.11 Tax changes

If any Tax is varied, repealed or introduced which materially affects the payments made under this Agreement the parties may negotiate in good faith the impact of any such Tax change on this Agreement. If they reach agreement the parties may vary this Agreement in accordance with clause 16.2 to equitably adjust any payments under this Agreement. In doing so the parties will take into account industry standards about the application of the change in transactions of a similar nature and scale to this Agreement.

5.12 Adjustment Event

If and to the extent an Adjustment Event arises in respect of a supply made by Airservices to the Customer under this Agreement, then:

(a) if Airservices' corrected GST amount is less than the previously attributed GST amount, Airservices must refund the difference to the Customer; and

(b) if Airservices' corrected GST amount is greater than the previously attributed GST amount, the Customer must pay the difference to Airservices,

and Airservices must issue an Adjustment Note to the Customer.

6 Use of Standard Data by Customer

6.1 Licence in respect of Standard Data

(a) The Customer acknowledges and agrees that, subject to any interest held by third parties, all right, title and interest (including all Intellectual Property Rights) subsisting in the Standard Data from time to time, remain vested in Airservices. Airservices providing access to the Standard Data to the Customer under this Agreement does not constitute a transfer or assignment of title to, or property in, the Standard Data.

(b) Airservices grants to the Customer a personal, non-exclusive, non-transferable, world-wide, revocable licence to:

(i) Use the Standard Data;

(ii) Enhance the Standard Data and Use those resulting Enhancements; and

(iii) Commercialise the Standard Data and / or any Enhancements,

subject to the conditions specified in this Agreement, and in particular clauses 6.2 to 6.6 (inclusive) and 7. The licence granted under this clause 6 will commence on the delivery of the Standard Data and will

continue until the Expiry Date of the Standard Data (if any) or this licence is revoked under clauses 5.4(d) or 5.4(e) or otherwise in accordance with this Agreement.

(c) Airservices reserves all rights in the Standard Data and Enhancements that are not expressly granted in this clause 6.

6.2 Enhancements

(a) The Customer may develop and produce Enhancements of the Standard Data.

(b) Subject to clause 6.4(a), Intellectual Property Rights in the Enhancements vest in the Customer on the date of creation of those Intellectual Property Rights.

(c) If requested by Airservices, the Customer must provide to Airservices a copy of each Enhancement that it develops and / or produces. The Customer grants Airservices a personal, non-exclusive, non-transferable, world-wide, royalty-free, fee-free, perpetual right to Use that copy for its internal business purposes.

6.3 Commercialisation

(a) The Customer may Commercialise the Standard Data or any Enhancement (each a Commercialised Product), subject to the terms and conditions of this Agreement.

(b) The Customer agrees that its right to Use Commercialised Products is conditional on the Customer:

(i) paying all Royalties or End User Charges payable under this Agreement;

(ii) ensuring that all third parties are prohibited from Commercialising all or part of a Commercialised Product;

(iii) ensuring that Airservices' ownership of Intellectual Property Rights in the Standard Data is acknowledged as required under this clause 6; and

(iv) complying with, and continuing to comply with, its obligations under clauses 6.4 and 7.2 in respect of the Commercialised Products.

6.4 Obligations of Customer

(a) The Customer acknowledges and agrees that it is the Customer's responsibility to access and download the Standard Data, including regularly checking for, and downloading, any updates.

(b) The Customer acknowledges and agrees that to access the Standard Data, the Customer is required to supply its own computer and all necessary equipment and must ensure that the computer and equipment are capable of accessing Airservices network and equipment and the Standard Data.

(c) To the extent that any Standard Data is comprised of Material sourced from a third party, the Customer agrees that the licence and Intellectual Property Rights granted in accordance with this clause 6 are subject to, and the Customer must comply with, any conditions or limitations of that third party that are notified by Airservices to the Customer from time to time in writing. The Customer acknowledges that this may, amongst other things, prevent the Customer from being able to:

(i) Use or Enhance certain parts of the Standard Data; and/or

(ii) Commercialise certain parts of the Standard Data and/or Enhancements.

(d) The Customer must not remove, obscure or interfere with any warning or disclaimer incorporated into the Standard Data, and will ensure that corresponding notices are included with any Enhancements and Commercialised Products, where appropriate.

(e) The Customer agrees that use of the Standard Data, Enhancements or Commercialised Products for Air Navigation is only permitted to the extent that the Customer complies with all relevant laws including the *Civil Aviation Regulations 1988* (Cth) and the *Civil Aviation Safety Regulations 1998* (Cth), including in particular Part 175 (including obtaining an instrument of approval from the Civil Aviation Safety Authority where required), and where the relevant approvals have not been obtained, the Standard Data and any Enhancements and Commercialised Products must be accompanied by or incorporate a prominent statement that they are not suitable for Air Navigation. The following words must appear in the statement:

"Not for use in air navigation".

(f) The Customer must ensure that each Commercialised Product:

(i) acknowledges the copyright of Airservices wherever the Standard Data is reproduced;

(ii) does not incorporate or is not accompanied by, or marketed using, any implication or representation that Airservices is associated with, endorses, or has authorised, the Commercialised Product, or that the Commercialised Product is a substitute for authorised data published by Airservices; or

(iii) subject to clause 6.4(f)(i), does not incorporate in the product name, or internal product labelling or titling, any of Airservices' marks or names, any of the Restricted Terms, or Airservices logo(s),

unless Airservices has expressly permitted this separately to this Agreement.

(g) The Customer must ensure that the following words (or words to the same effect) appear concurrently with any part of the Standard Data that contains a map which is not to scale:

"*Note: Map not to scale. Do not use for navigational purposes*".

(h) The Customer must not do, or cause, or authorise the doing of, anything in connection with the Standard Data, an Enhancement or a Commercialised Product which may adversely affect or jeopardise Airservices' rights, title and interest (including Intellectual Property Rights), or those of a third party, in the Standard Data.

(i) The Customer must comply with all reasonable directions, instructions or specifications given by Airservices from time to time about:

(i) the Use or Enhancement of the Standard Data; and/or

(ii) Commercialised Products,

in connection with this Agreement, including, but not limited to where those directions, instructions or specifications are directed to preventing a compromise of safe air navigation or air safety generally.

Airservices is not, however, required to give such directions, instructions or specifications.

(j) The Customer must not in any way make use of or deal with the Standard Data except as expressly provided under this Agreement.

(k) The Customer's login ID and password for accessing the Standard Data through the Data Portal are for the exclusive use of its Authorised Personnel. The Customer agrees to:

(i) protect its login ID and password from being lost, stolen or disclosed to any third party (excluding any Authorised Personnel);

(ii) not record or provide its login ID or password electronically or physically in a manner that will allow someone other than its Authorised Personnel to obtain or use it; and

(iii) advise Airservices as soon as it suspects that someone other than its Authorised Personnel knows its login ID or password, or if they have been lost or stolen.

6.5 Sublicensing

(a) The Customer may sublicense the Standard Data and Enhancements only for the personal use or internal business use of its sublicensees.

(b) Any sublicence granted in accordance with this clause 6.5:

(i) must be limited to:

(A) a non-transferable, revocable and non-exclusive licence;

(B) rights to reproduce in a material form and to communicate to the public; and

(C) the duration of the term of the licence granted under clause 6.1; and

(ii) must include the following minimum terms:

(A) terms equivalent to those included in clauses 6.4(d) and 6.4(i);

(B) only allow for Use of the Standard Data for personal use or internal business use;

(C) a prohibition on further sublicensing or assignment by the sublicensee of any copyright in the Standard Data;

(D) a prohibition on any Commercialisation of the Standard Data or any Enhancement; and

(E) a prohibition on any other accessing, downloading, copying, reproduction, storage, editing, alteration, modification, adaptation, development, reverse-engineering, decompiling, exploiting, selling, letting for hire, offering by way of trade, exposing for sale or hire, distributing, publishing or communicating to the public, or any other use, of the Standard Data, by the sublicensee or any other person that is not expressly authorised by this Agreement.

6.6 Unauthorised Use

(a) The Customer is responsible for ensuring that there is no Unauthorised Use of the Standard Data by any of its Personnel or sublicensees, including through the use of appropriate supervision, control and security measures.

(b) If the Customer becomes aware of any Unauthorised Use (whether by its Personnel or by third parties) it must:

(i) immediately notify Airservices in writing about the Unauthorised Use;

(ii) take all reasonable steps to prevent further Unauthorised Use; and

(iii) cooperate with Airservices to prevent further Unauthorised Use.

(c) Any Unauthorised Use of the Standard Data by the Customer or its Personnel or sublicensees will entitle Airservices to:

(i) terminate this Agreement under clause 12.1;

(ii) revoke the licence and rights granted under this clause 6; and

(iii) take such action against the Customer or individual Personnel or sublicensees as it considers necessary, including proceedings seeking injunctive relief and/or compensation for infringement of its rights and/or breach of contract.

(d) Nothing in this Agreement imposes any obligation on Airservices to take any action in relation to the Standard Data, Enhancements or Commercialised Products, whether by taking proceedings for infringement or otherwise.

(e) If Airservices takes any action relating to the Standard Data, any Enhancement or Commercialised Product in connection with this Agreement, the Customer must fully cooperate with Airservices' reasonable requests for assistance (at Airservices' expense) in relation to that action.

6.7 Moral Rights

(a) The licence granted in this clause 6 does not include or constitute consent to the infringement of any Moral Rights. The Customer must not commit any act which constitutes an infringement of an author's Moral Rights, except where that author has given a Moral Rights consent that meets the requirements of the *Copyright Act 1968* (Cth).

(b) The Customer must ensure that its Use of the Standard Data, Enhancements and/or Commercialised Products does not infringe the Moral Rights of any person.

(c) The Customer must seek Moral Rights consents, where required.

7 Conditions attaching to Use of Standard Data

7.1 Acknowledgment from Customer

(a) The Customer agrees that:

(i) Airservices has not tailored the Standard Data to the Customer's requirements or specifications;

(ii) to the extent permitted by law, Airservices gives (whether explicitly or implicitly) no assurances, promises or warranties that the Format in which the Standard Data is delivered will be usable by the Customer, or will otherwise be compatible with the systems and/or software used by the Customer;

(iii) to the extent permitted by law, Airservices has given (whether explicitly or implicitly) no assurances, promises or warranties that the Standard Data is suitable for any given purpose, function or outcome, or that the Use or application of the Standard Data, Enhancement, or any Commercialised Product, will generate any particular result or benefit;

(iv) other than in the circumstances referred to in clause 8.2(d), the Use or application of the Standard Data, any Enhancement or any Commercialised Product by the Customer, its Personnel or its customers is entirely at the Customer's risk; and

(v) it is at all times solely responsible for:

(A) its selection of the Standard Data;

(B) all business decisions made in respect of its Use of the Standard Data and Enhancements;

(C) the interpretation of any results obtained from its Use of the Standard Data and/or any Enhancement (including Use of any Commercialised Product), and must exercise (and direct all third parties to which it grants rights to Use Commercialised Products to take) all appropriate precautions before placing reliance on those results; and

(D) the accuracy, integrity and fitness for purpose of all Commercialised Products supplied to its customers.

7.2 Air safety

(a) The Customer agrees that it will:

(i) maintain the accuracy and integrity of the Standard Data when Using the Standard Data, creating any Enhancement and/or Using a Commercialised Product;

(ii) inform all of its Personnel that maintaining the accuracy and integrity of the Standard Data is essential for safe Air Navigation and air safety generally;

(iii) only Use, Enhance and Commercialise the most recent version or update of the Standard Data made available by Airservices through the Data Portal;

(iv) where the Standard Data has an Expiry Date, not Use, Enhance or Commercialise any expired Standard Data;

(v) update its Commercialised Product(s) (if any) as soon as it becomes aware of:

(A) a new version of, or amendments or alterations to, the Standard Data; or

(B) an error or mistake in the Standard Data or any Enhancements; and

will cease Commercialising that Commercialised Product until it is updated and will be fully responsible for all costs associated with this process;

(vi) where it becomes aware of, or suspects, an error in the Standard Data, notify Airservices as soon as it is reasonably able of the error or the suspected error;

(vii) not do or omit to do, or cause or authorise the doing or omission of, anything in connection with the Standard Data, an Enhancement or a Commercialised Product which may adversely affect or jeopardise in any way, safe Air Navigation or air safety generally;

(viii) immediately report to Airservices anything done or omitted to be done, or caused or authorised, by the Customer (or, if known, by third parties who may be Using a Commercialised Product) in connection with the Standard Data which may adversely affect or jeopardise, in any way, safe Air Navigation or air safety generally; and

(ix) comply with all requirements imposed by law, including the *Civil Aviation Regulations 1988* (Cth) and *Civil Aviation Safety Regulations 1998* (Cth) in relation to its Use or Commercialisation of the Standard Data or Enhancements.

(b) The Customer must inform Airservices as soon as possible of any matter in connection with this Agreement which, in the opinion of the Customer, could affect safe Air Navigation or air safety generally.

8 Warranties, indemnities and insurance

8.1 Customer warranties

The Customer warrants that:

(a) if it is a trustee, it enters this Agreement personally and in its capacity as trustee and warrants that it has the power to perform its obligations under this Agreement;

(b) it is authorised to enter into this Agreement;

(c) all actions necessary for the authorisation, execution and performance of this Agreement have been duly taken; and

(d) there are no limitations or restrictions, legal or otherwise, that bind or otherwise affect it, that will prevent it from giving full force and effect to the rights granted or promises or assurance given in this Agreement.

8.2 Airservices warranties

Subject to clause 8.3, Airservices warrants that:

(a) it will produce the Standard Data with due care and skill;

(b) as at the time the Standard Data is delivered to the Customer, the Standard Data is current;

(c) it will use all reasonable endeavours to ensure that the Standard Data is free from errors, and that the Standard Data, as delivered to the Customer, is free from Harmful Code; and

(d) the Customer's Use of the Standard Data in accordance with this Agreement (including the terms and conditions of the licence granted under this Agreement) will not infringe the Intellectual Property Rights of any third party.

8.3 Limitations on warranty obligations

(a) The Customer acknowledges and agrees that the warranties given by Airservices in clauses 8.2(a) and 8.2(b) must be construed subject to limitations with respect to the Standard Data and its Use specified in clause 7.1.

(b) The Customer agrees that Airservices gives no warranty and makes no representations:

(i) in relation to any Enhancement or Commercialised Product developed or produced by the Customer, and in particular, the Customer agrees that the warranty given in clause 8.2(d) does not apply to any Enhancements, or to any Commercialised Products of the Customer; and

(ii) that the Standard Data will be available via the Data Portal at all times.

(c) The Customer agrees that Airservices is not responsible for:

(i) the operation of any computer system, communication system, software or ancillary equipment used by the Customer to access the Data Portal;

(ii) any delays, errors, inaccuracies or omissions due to a failure or incompatibility in or between a computer system, communication system, software, the Data Portal or ancillary equipment, or other circumstances beyond Airservices direct control; or

(iii) any Loss associated with transmission of Harmful Code.

(d) The Customer acknowledges that it has not relied on any representation made by Airservices which has not been expressly stated in this Agreement.

8.4 Indemnity from Airservices

(a) Subject to this clause 8.4 and clause 9, Airservices indemnifies the Customer against all Losses sustained or incurred by the Customer arising from an action or proceeding instituted, or order obtained, by a third party against the Customer alleging or determining (as the case may be) that the Customer's Use of the Standard Data infringes that third party's Intellectual Property Rights.

(b) To the extent permitted by law, the indemnity in clause 8.4(a) is, subject to clause 8.4(d), the Customer’s sole remedy arising from an action or proceeding instituted, or order obtained, of the type referred to in clause 8.4(a), but Airservices obligation to indemnify is conditional on the Customer:

(i) notifying Airservices immediately of any such action or proceeding having been made;

(ii) refraining from making any admissions in, or concluding any settlement of, such action or proceeding;

(iii) permitting Airservices to assume the conduct of the defence and, if applicable, settlement of such action or proceeding in the Customer's name; and

(iv) providing Airservices with full co-operation in the defence and, if applicable, settlement of any such action or proceeding.

(c) Airservices will not be obliged to indemnify the Customer to the extent that a third party institutes an action or proceeding, or obtains an order, of the type referred to in clause 8.4(a), as a result of:

(i) any Unauthorised Use by the Customer or any of its Personnel or sublicensees;

(ii) the Customer's Use or Enhancement of the Standard Data or Use of Commercialised Products contrary to this Agreement; or

(iii) the Customer's failure to Use corrections made available by Airservices to avoid infringement.

(d) Where a third party institutes an action or proceeding, or obtains an order, of the type referred to in clause 8.4(a), in respect of Standard Data, Airservices may (but is not obliged to):

(i) modify or replace the Standard Data (as the case may be) at Airservices' expense to make it non-infringing; or

(ii) procure the right for the Customer to continue Using the Standard Data,

and if it does so, it will not be liable to indemnify the Customer under clause 8.4(a).

8.5 Indemnity from Customer

(a) The Customer must indemnify Airservices and its Personnel against all Loss suffered or incurred (or agreed to be paid by way of settlement or compromise) to the extent that the Loss arose from:

(i) any Use of the Standard Data, any Enhancement or any Commercialised Product, by the Customer or its Personnel or sublicensees, whether or not that Use is in accordance with this Agreement;

(ii) the Customer's breach of, or failure to comply with, clauses 6.3 to 6.6 (inclusive);

(iii) the Customer's breach of its obligations under clause 11; or

(iv) the fraudulent, unlawful or negligent acts or omissions of the Customer.

(b) Airservices agrees that it may not claim or enforce an indemnity under clause 8.5(a)(i) to the extent that the Use by the Customer of Standard Data which is found to infringe a third party's Intellectual Property Rights was otherwise in accordance with this Agreement.

(c) For the purposes of clause 8.5(a), the parties agree that Airservices enters into this Agreement on its own behalf and as agent for each of its Personnel, and that each such Personnel may claim under, and/or enforce the indemnity given under clause 8.5(a) directly against the Customer, as if such Personnel were a party to this Agreement.

8.6 Insurance

(a) Where the Customer Uses Commercialised Products, the Customer must obtain and maintain the following insurances from the Commencement Date until at least 7 years after the Customer ceases Using the Commercialised Products:

(i) public and products (including information technology errors and omissions) liability insurance to at least the value of $10 million for any one occurrence and in the aggregate for products liability insurance; and

(ii) professional indemnity insurance to at least the value of $5 million for any one claim and in the aggregate;

(b) Without limiting clause 8.6(a), where the Customer Uses the Standard Data and/or Commercialised Products for air navigation purposes in accordance with clause 6.4(e), the Customer must obtain and maintain public and products liability insurance that includes aviation related exposures to at least the value of $50 million for any one occurrence and in the aggregate for products liability insurance, from the Commencement Date until at least 7 years after the Customer ceases Using the Standard Data or the Commercialised Products.

(c) If the Customer is required to maintain insurance under this clause 8.6, the Customer must:

(i) not reduce any insurance policy required by this Agreement without the written consent of Airservices; and

(ii) give evidence of the insurances and their currency, in a form acceptable to Airservices, on request.

9 Limitation of liability

9.1 Consumer Guarantees

(a) The Australian Consumer Law (as embodied in the *Competition and Consumer Act 2010* (Cth) and other State and Territory consumer protection Acts) provides certain statutory guarantees in respect of consumer contracts, which cannot be excluded, restricted or modified (**Consumer Guarantees**).

(b) Subject to any such Consumer Guarantees, Airservices gives no guarantee, conditions, warranty or undertaking, and makes no representation about the condition, or suitability of the Standard Data, its quality, fitness for purpose or safety, other than those set out in this Agreement.

(c) If the amount paid or payable for the Standard Data does not exceed $100,000:

(i) the Customer is entitled to the Consumer Guarantees;

(ii) if Airservices fails to comply with a Consumer Guarantee, its total liability to the Customer is limited to one or more of the following (at Airservices' discretion):

(A) supplying the Standard Data again; or

(B) payment of the costs of having the Standard Data supplied again; and

(iii) Airservices' total liability to the Customer for breach of any condition, warranty or term of this Agreement that is not a

breach of a Consumer Guarantee is limited in the way set out in clauses 9.2 and9.3.

(d) If the amount paid or payable for the Standard Data exceeds $100,000:

(i) the Consumer Guarantees do not apply; and

(ii) Airservices' total liability to the Customer for breach of any condition, warranty or term of this Agreement is limited as set out in clause9.3.

(e) Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee that applies, under the Australian Consumer Law which cannot be lawfully excluded or limited.

9.2 Exclusion

Without limiting clause 9.1, to the extent permitted by law, each party excludes all liability to the other party for all indirect, special or consequential Loss arising out of breach of this Agreement or in connection with the relationship established by it. For the purposes of this clause 9.2, indirect, special or consequential Loss means loss of profits, loss of business revenue or anticipated savings, loss of opportunity, loss of data, other commercial or economic loss of any kind and, with the exception of Loss covered by the indemnities under clauses 8.4(a) or 8.5, Loss resulting from third party Claims.

9.3 Limitation

Airservices' total liability to the Customer for all Loss arising out of breach of this Agreement (including breach of any Implied Term) or in connection with the relationship established by it that is not excluded under clause 9.2 is limited in the aggregate for any and all Claims to the total amount paid by the Customer to Airservices under this Agreement.

9.4 Contribution

Each party's liability to the other party for any Loss arising out of this Agreement or in connection with the relationship established by it is reduced to the extent the second party contributed to the Loss. This applies to all Claims.

9.5 No reliance

Subject to clause9.1:

(a) the only terms, conditions or warranties that apply to the supply of the Standard Data under this Agreement are the express terms of this Agreement. All other terms, conditions or warranties implied by law, custom or usage are excluded to the fullest extent permitted by law; and

(b) the Customer acknowledges that, except as expressly stated otherwise, in entering into this Agreement it has not relied on any representations, warranties, promises or undertakings by Airservices but has relied on its own knowledge or independent advice.

10 Records and audit

10.1 Records

The Customer must keep full, complete and accurate books of account and records covering:

(a) all transactions relating to the subject matter of this Agreement; and

(b) without limiting clause 10.1(a), any Enhancement or Commercialisation activity, and the revenue generated from any Commercialised Products.

10.2 Audit and inspection

(a) At the request of Airservices on 10 Business Days' written notice, the Customer must:

(i) permit Airservices or its nominees to enter premises used or occupied by the Customer during normal business hours to:

(A) audit the Customer's compliance with this Agreement, or any matter related to safe air navigation or air safety generally arising in relation to this Agreement; and/or

(B) audit (on an open book basis) the revenue collected by the Customer in relation to Commercialised Products to verify the amount of Royalty payable; and

(ii) give Airservices copies of any relevant documents and summaries of the information recorded by the Customer under clause 10.1.

(b) The Customer must participate cooperatively in any inspections and audits, and make all relevant books of account and records available to Airservices.

(c) Subject to clause 10.2(d)(iii), each party will bear its own costs of any inspections and audits.

(d) If any inspection or audit shows that the Customer has underpaid any amount due under this Agreement, then:

(i) Airservices will specify the amount of the underpayment to the Customer by notice in writing;

(ii) the Customer will pay that amount to Airservices within 20 Business Days after the date of the notice; and

(iii) Airservices costs of the inspection or audit will be refunded by the Customer to Airservices.

(e) The Customer must take action to implement any recommendations or corrective action identified by the inspection or audit and relating to its compliance with this Agreement.

11 Confidential Information and privacy

11.1 Use and transfer of Confidential Information

(a) Each party must not (except with the written consent of the other party) use the Confidential Information of the other party except in performing its obligations or exercising its rights under this Agreement.

(b) Each party agrees not to transfer any of the other party's Confidential Information outside Australia, or to allow persons outside Australia to have access to it, without the other party's prior written approval.

11.2 Disclosure of Confidential Information

No Confidential Information of one party may be disclosed by the other party to any person without the written consent of the first party except where that Confidential Information:

(a) is disclosed by the party to its advisers or Personnel in order to comply with its obligations, or to exercise its rights, under this Agreement;

(b) is disclosed by Airservices to its responsible Minister, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia or otherwise for its reporting and accountability requirements;

(c) is shared by Airservices within its organisation, or with another Australian Government agency;

(d) is authorised or required by the rules of a stock exchange to be disclosed; or

(e) is authorised or required by law, including under this Agreement, to be disclosed.

11.3 Obligations on disclosure

Where a party discloses Confidential Information to another person under clauses 11.1 or 11.2 that party will:

(a) notify the receiving party that the information is Confidential Information; and

(b) if disclosure is under clauses 11.2(a) or 11.2(c), not provide the information unless the receiving party agrees to keep the information confidential.

11.4 Return of Confidential Information

A party which has received Confidential Information from the other party under this Agreement must, on the request of the disclosing party, immediately deliver to that party all documents or other Materials containing or referring to that information which are in the possession, power or control of it or persons who have received Confidential Information from it under clause 11.1 or clause 11.2, or otherwise deal with those documents or that Material as reasonably requested by the disclosing party.

11.5 Announcements or releases

(a) Subject to clause 11.5(b), the Customer must not make media or internet statements, postings, announcements or releases (in this clause 11.5, **public announcements**) relating to the Standard Data, this Agreement and the transactions the subject of this Agreement without the approval of Airservices to the form, manner and content of the public announcement.

(b) The Customer may make a public announcement if the public announcement is required to be made by law or by the rules of a stock exchange.

11.6 Privacy

The parties agree to comply with the provisions of the *Privacy Act 1988* (Cth), including the Australian Privacy Principles set out in that Act, in respect of any Personal Information collected, used or disclosed under this Agreement, whether or not they are legally bound to comply with that Act.

11.7 Notification of infringement

If the Customer becomes aware of any infringement or alleged infringement of its obligations under this clause 11, whether by it or its Personnel or sublicensees, the Customer must:

(a) notify Airservices immediately; and

(b) comply with any reasonable directions from Airservices with respect to remedying that infringement.

12 Termination

12.1 Termination for cause

Airservices may terminate this Agreement at any time by notice to the Customer with immediate effect from the date of the notice if the Customer:

(a) breaches its obligations under clause 6.4, or fails or refuses to comply with 6.6;

(b) breaches any provision of this Agreement (other than those referred to in clause 12.1(a)), and fails to remedy the breach within 30 days of receiving notice from Airservices to do so; or

(c) becomes Insolvent.

12.2 Termination for convenience

(a) Either party may terminate this Agreement or reduce its scope by providing no less than 60 Business Days prior written notice.

(b) Notwithstanding clause 12.2(a) Airservices may, at any time, by notice, terminate this Agreement, for a machinery of government change or where Airservices considers at its absolute discretion that the Customer has done or omitted to do, or caused or authorised to be done or omitted, anything in connection with the Standard Data which may adversely affect or jeopardise, in any way, safe air navigation or air safety generally.

(c) If this Agreement is terminated under clause 12.2(b), Airservices is liable only for reasonable costs actually incurred by the Customer and directly attributable to the termination.

12.3 Consequences of expiry and termination generally

(a) On expiry or termination of this Agreement (irrespective of the basis of termination):

(i) to the extent that there are amounts due and/or payable to Airservices by the Customer under this Agreement, the Customer must pay Airservices those amounts within seven days of termination;

(ii) Airservices will revoke the Customer's access to the Standard Data, including its login ID and password; and

(iii) the Customer must at the direction of Airservices, either:

(A) return to Airservices; or

(B) destroy (and certify in writing, such destruction);

all Material given by Airservices in connection with this Agreement (including all copies of the Standard Data in the possession, power or control of the Customer).

(b) If this Agreement is terminated under clause 12.1, then, without limiting clause 12.3(a), the licence granted to the Customer under clause 6 is revoked as of termination of this Agreement, and the Customer must:

(i) cease all Use of the Standard Data and Enhancements, and procure that all Use of the Standard Data and Enhancements by its Personnel and sublicensees ceases; and

(ii) cease any further use of Commercialised Products, and procure that all Use of Commercialised Products by third parties under arrangements entered into by the Customer ceases,

immediately upon the revocation of that licence.

(c) If this Agreement expires or is terminated under clause 12.2, the licence granted to the Customer under clause 6 will continue in full force and effect:

(i) subject to the Customer's continuing compliance with the conditions of this Agreement with respect to Use, Enhancement and Commercialisation; and

(ii) on the basis that the provisions of this Agreement as they apply to the Customer's exercise of rights granted under that licence will continue to bind, and be enforceable against, the Customer.

Notwithstanding the previous sentence, the Customer agrees that, on expiry or termination under clause 12.2, it will not be entitled or permitted to undertake or apply for rights to develop any new Enhancements or Commercialised Products.

12.4 Survival of claims, remedies, obligations

(a) The expiry or termination of this Agreement will not amount to a release or waiver of any remedy or cause of action one party may have against the other in respect of the actions, omissions, breach, negligence or other conduct of that other party prior up to and including the date of termination.

(b) Without limiting any specific provision addressing the survival and operation of provisions of this Agreement, the parties agree that their respective rights and obligations under, and the operation of, clauses 5.6, 6 (in accordance with clause 12.3(c)), 7, 8.5, 8.6, 9, 10, 11, 12, 13 and 19 will survive the expiry or termination of this Agreement, and:

(i) the respective parties may continue to enforce those rights, and must continue fulfil those obligations (as the case may be); and

(ii) the nature and extent of those rights and obligations will continue to be construed by reference to those clauses,

notwithstanding the expiry or termination of this Agreement.

13 Applicable law

This Agreement is governed by and is to be construed in accordance with the laws applicable in the Australian Capital Territory and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the Australian Capital Territory and its courts of appeal.

14 Dispute resolution

(a) If there is a dispute in connection with this Agreement the parties will take the steps set out in this clause 14 to seek to resolve the dispute before taking legal proceedings. If a party does not comply with this clause 14 in relation to a dispute, the other party does not have to comply with this clause in relation to the dispute.

(b) If a party believes a dispute has arisen in connection with this Agreement and that party wishes to pursue that dispute, that party must give written notice to the other party, adequately identifying and providing details of the dispute.

(c) On receipt of a dispute notice the parties must use their best efforts to resolve the dispute without delay, including by escalating the dispute according to the following steps:

(i) The parties agree to negotiate through their respective contact person in good faith and use best endeavours to resolve the dispute.

(ii) If the dispute is not resolved within 10 Business Days of the receipt of the notice referred to in clause 14(c) (or such longer period as agreed by the parties in writing), the dispute will be referred to the relevant General Manager within Airservices and the equivalent management level within the Customer, for the purposes of negotiating a resolution to the dispute.

(iii) If the dispute is not resolved within 10 Business Days of referral under clause 14(c)(ii) (or such longer period as agreed by the parties in writing), then the dispute will be referred to the Executive General Manager of Airservices and the General Manager (or equivalent) of the Customer for the purposes of negotiating a resolution to the dispute.

(iv) If the dispute is not resolved within 10 Business Days of referral under 14(c)(iii) (or such longer period as agreed by the parties in writing), then the dispute will be referred to the Chief Executive of Airservices and the Chief Executive (or equivalent) of the Customer for the purposes of negotiating a resolution to the dispute.

(d) Any information or documents disclosed by a party under this clause 14:

(i) must be kept confidential; and

(ii) may only be used to attempt to resolve the dispute.

(a) This dispute resolution procedure does not prevent a party from applying to a court for urgent interlocutory relief or any relief to protect Intellectual Property Rights.

15 Unavoidable delay

(a) A party is not liable for any delay or failure to perform its obligations under this Agreement if:

(i) the delay or failure is caused by an event beyond the non-performing party’s reasonable control (including war, terrorism, natural disaster or labour dispute not solely involving its personnel); and

(ii) it notifies the other party of the event beyond its reasonable control as soon as it becomes aware of it.

(b) This clause 15 does not apply to the Customer's obligations under clauses 5 and 6 of this Agreement.

16 Contract management

16.1 Contact persons and communications

(a) Airservices' Publications Unit will represent Airservices for the day to day purposes of this Agreement. The Publications Unit can be contacted at publications.unit@airservicesaustralia.com.

(b) The contact person(s) nominated by the Customer in the Standard Data Order Form (or subsequently advised to Airservices in writing) or their nominees will represent the Customer for the day to day purposes of this Agreement.

16.2 Variation

(a) This Agreement may be varied at any time:

(i) in writing signed by both parties; or

(ii) by Airservices providing 20 Business Days prior written notice to the Customer of the variation and the effective date of the variation (**Variation Effective Date**) in accordance with clause 17.

(b) If the Customer does not wish to continue with the agreement after receiving notice from Airservices under clause 16.2(a)(ii), the Customer may terminate this Agreement by providing Airservices with written notice 10 Business Days prior to the Variation Effective Date, in accordance with clause 17.

17 Notices

17.1 Requirements

(a) A notice or any other communication in connection with this Agreement will be in writing and if the communication is:

(i) to Airservices, marked for the attention of the Airservices Australia - Other Business Revenue, and either:

(A) posted to GPO Box 367 Canberra ACT 2601, Australia;

(B) as long as the communication is not made under clauses 2, 6, 8, 12, 14, or 16, emailed to data.airservices@airservicesaustralia.com;

(ii) to the Customer, marked for the attention of the person specified as the Customer's contact person, and either:

(A) sent to the postal address specified on the Standard Data Order Form;

(B) as long as the communication is not made under clauses 2, 6, 8, 12, 14, or 16:

(I) sent by email to the email address specified on the Standard Data Order Form; or

(II) posted on Airservices' website or through the Data Portal.

(b) The Customer must regularly check the Airservices website and the Data Portal for notices.

17.2 When received

A communication is taken to be received:

(a) in the case of a posted letter,

(i) if hand delivered, on delivery;

(ii) if posted by express post in Australia on the first Business Day after posting;

(iii) if posted to or from a place outside Australia, on the tenth Business Day after posting; or

(b) in the case of email:

(i) at the time that would be the time of receipt under the Electronic Transactions Act 1999 (Cth).

(c) if posted on Airservices' website or through the Data Portal, at the time of posting.

17.3 When given

If a communication is given:

(a) after 5.00pm; or

(b) on a day that is not a Business Day,

it is taken as having been given at 9.00am on the next day that is a Business Day.

18 Miscellaneous

(a) These terms and conditions and the documents referred to herein constitute the entire agreement of the parties about their subject matter. Any prior agreement, undertakings and negotiations on that subject matter cease to have any effect.

(b) Nothing in this Agreement constitutes either party as the employee, agent, partner or joint venturer of the other.

(c) Airservices may assign any of its rights, or novate or otherwise deal with any of its rights or obligations, under this Agreement by notice to the Customer. The Customer must, at no cost to Airservices, promptly execute any documents necessary to give effect to this. The Customer acknowledges and agrees that its rights and obligations under this Agreement are personal to the Customer and may not be assigned, novated or otherwise transferred without the prior written consent of Airservices. A change in Control of the Customer is deemed to be an assignment. Any purported dealing by the Customer in breach of this clause will be void and a material breach.

(d) A provision of, or a right created under, this Agreement may not be waived except in writing signed by the party or parties to be bound.

(e) A party may exercise a right at its complete discretion, whether separately or concurrently with any other right.

(f) A single or partial exercise of a right including waiver does not prevent a further exercise of that or of any other right.

(g) Failure by a party to exercise or delay in exercising a right does not prevent its exercise.

(h) Where this Agreement provides for a party's consent to something occurring or approval of something, that consent or approval may be granted, withheld, or conditions applied to it, in the party's complete discretion, unless the provision states that consent or approval will not be unreasonably withheld.

(i) Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

(j) If there is a time for performance of an obligation under this Agreement, the performing party agrees to perform by the time specified. Each party agrees to perform all other obligations promptly.

(k) Each party will do all things reasonably possible to mitigate all Losses:

(i) arising out of or in connection with any breach or termination of this Agreement; and/or

(ii) that are the subject of a right for that party to be indemnified by the other party.

(l) Each party will promptly do whatever any other party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.

(m) A party does not need to incur an expense or make a payment before enforcing a right of indemnity.

(n) Each party will bear its own costs of entering into this Agreement.

(o) The Customer will pay any stamp duty payable in connection with this Agreement (including any fines and penalties).

(p) If there is any inconsistency between the provisions of this Agreement, the provision in the higher ranked document listed below will prevail to the extent of the inconsistency:

(i) terms and conditions;

(ii) the Standard Data Order Form; and

(iii) any document incorporated by reference.

19 Definitions and interpretation

19.1 Definitions

In this Agreement:

Agreement means this Agreement between Airservices and the Customer, as amended from time to time, and includes its Schedules and any attachments.

Adjustment Note has the same meaning as in the GST Law.

Adjustment Event has the same meaning as in the GST Law.

Airservices means Airservices Australia, the body corporate established by the *Air Services Act 1995* (Cth).

Air Navigation means the process of planning, monitoring and / or directing the progress of an object or aircraft in air (including in both controlled and un-controlled airspace) between selected geographic points or over a selected route.

Australian Privacy Principle has the meaning given by the *Privacy Act 1988* (Cth).

Authorised Personnel means the employees or contractors of the Customer who are authorised by the Customer to Use the Standard Data for the purposes of developing and / or distributing Commercialised Products.

Business Day means a day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory.

Claim means any cause of action, allegation, claim, demand, debt, liability, suit or proceeding of any nature however arising and whether present or future, fixed or unascertained, actual or contingent or at law (including negligence), in equity, under statute or otherwise.

Commencement Date means the date on which You accept this Agreement in accordance with clause 3.

Commercialise means exploiting, selling, licensing, letting for hire, offering by way of trade, offering or exposing for sale or hire, distributing, publishing or communicating (other than communication internally to the relevant party's own Personnel).

Commercialised Product means a product that incorporates the Standard Data or an Enhancement and that is Commercialised by the Customer.

Confidential Information of a party means all information relating to the business, technology, financial or other affairs of a party that is by its nature confidential and:

(a) is designated by that party as confidential; or

(b) the other party knows or ought to know is confidential,

but does not include information which:

(c) is already in or becomes part of the public domain other than through breach of this Agreement or an obligation of confidence owed to the disclosing party;

(d) was already known to the recipient at the time of disclosure by the disclosing party (and the recipient can prove this through contemporaneous written documentation), unless such knowledge arose from disclosure of information in breach of an obligation of confidence; or

(e) is acquired by the recipient from a source other than the disclosing party or any representative of that party, where such source is entitled to disclose it.

Consumer Guarantees has the meaning set out in clause 9.

Control means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of an entity whether through voting shares, securities, control of the board of directors or otherwise.

Customer means the person identified in the Standard Data Order Form as the acquirer of the Standard Data.

Data Portal means the part(s) of the Airservices website through which the Customer subscribes for and accesses Standard Data.

Data Product Specification means a document containing a detailed specification of the Format, data quality and data integrity standards for the Standard Data supplied under this Agreement, including the procedures for managing requests made by either party, for alternations to the data, information or charts.

Data Use Percentage means that portion of a Customer's Commercialised Product (expressed as a percentage) that derives from, uses, publishes, reproduces or incorporates the Standard Data.

End User Charge means $665.00 (exclusive of GST) or an amount otherwise specified on an invoice issued under clause 5.2(c), as varied in accordance with clause 5.7(c) from time to time.

Enhancement means any:

(a) edit, alteration, modification, adaptation or development of the Standard Data by, or on behalf of, the Customer; or

(b) work, product or service created or undertaken by, or on behalf of, the Customer that is derived from the Standard Data or incorporates any portion of the Standard Data, whether combined with other data or Material or not, and

in which Intellectual Property Rights subsist.

Expiry Date means the expiry date specified on or in the Standard Data (if any).

Format means the format in which the Standard Data will be provided to the Customer by Airservices, as specified in the Standard Data Product Groups Table and the Data Product Specification for that type of data.

GST has the same meaning as in the GST Law.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Harmful Code means any form of harmful or surreptitious code or other contaminants, including commands, instructions, devices, techniques, bugs, web bugs, software locks, software keys, automatics, random expiry dates, trojan horses, spyware or adware.

Initial End User Charge has the meaning given in clause 5.7.

Initial Subscription means the period of 12 months from the date on which Airservices initially supplies the Standard Data to the Customer.

Initial Subscription Fees has the meaning given in clause 5.3(b).

Insolvent means being insolvent under administration or insolvent (each as defined in the *Corporations Act 2001* (Cth)) or having a controller (as defined in the *Corporations Act 2001*(Cth)) appointed, or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, bankrupt, subject to a sequestration order, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved or otherwise unable to pay debts when they fall due, or having something with the same or similar effect happen under the laws of any jurisdiction.

Intellectual Property Rights means:

(a) all rights in copyright, trade marks (including service marks), trade and service names, designs, circuit layouts, patents, inventions, discoveries and rights of confidence; and

(b) all other rights or forms of protection of a similar nature or having similar or equivalent effect to any of them, whether under international convention or otherwise,

that may subsist anywhere in the world, whether current or future or registered (including applications for any of the above) or unregistered.

Loss means any loss, damage, liability, cost or expense (including legal expenses on a full indemnity basis) of any kind suffered or incurred or agreed to be paid by way of settlement or compromise.

Material includes any data, information and other documents (including electronic documents) and software.

Moral Rights means the right of attribution of authorship, the right not to have authorship falsely attributed, and the right of integrity of authorship as conferred by law, including those conferred by the *Copyright Act 1968* (Cth).

Personal Information has the meaning given to it in the *Privacy Act 1988* (Cth).

Personnel includes a party's officers, employees, agents, contractors, advisers and consultants.

Renewed Subscription means any Subscription after the Initial Subscription.

Restricted Terms means any of: 'authorised', 'endorsed', 'approved', 'official', 'IAIP Australia', 'AIP Australia', 'Integrated Aeronautical Information Package Australia', 'Aeronautical Information Package Australia', 'AIC', 'Aeronautical Information Circular', 'DAP', 'Departure and Approach Procedure', 'ERSA', 'En Route Supplement Australia', 'ASA', 'AA', 'Airservices' or 'Airservices Australia'.

Royalty means, for each of the Customer's Commercialised Products, the dollar amount equal to 15% of gross sales revenue for that Commercialised Product MULTIPLIED BY the Data Use Percentage for that Commercialised Product.

> *Worked Example: **Customer** provides a manual to airlines earning gross sales revenue of $100,000. The **Data Use Percentage** is 50% (ie the manual includes 50% **Standard Data** or put another way, 50% of the data in the manual is derived from the **Standard Data**). Therefore the **Royalty** for the manual is: $100,000 x 50% x 15% = $7,500.*

Royalty Calculation Form means the template form prescribed by Airservices from time to time and available via the Data Portal, which must be completed and submitted by the Customer to enable Airservices to calculate and/or confirm the calculation of the amount of Royalties payable for that period (where the End User Charge is not payable).

Royalty Period has the meaning given to that term in clause 5.6(c).

Standard Data means the data specified in the Standard Data Order Form that the Customer has selected from the Standard Data Product Groups Table, to be the subject of the Subscription.

Standard Data Order Form means the electronic Standard Data Order Form completed by the Customer (typically through the Data Portal) specifying, among other things, the Standard Data for which the Customer requests a Subscription and the purposes for which the Customer requests access to that Standard Data (including, where applicable, any Enhancing or Commercialisation activities the Customer intends to undertake).

Standard Data Product Groups Table means the table in the Standard Data Order Form.

Subscription has the meaning given in clause 4.

Subscription Fees means the fees paid or to be paid for the supply of access to the Standard Data and licensing of the Standard Data, as specified either in the Standard Data Order Form or in any invoice for Subscription renewal.

Tax includes:

(c) any tax, withholding tax, charge, rate, duty (including stamp duty and customs duty), impost, excise, tax by whatever name called and whether Australian, foreign, state, municipal, provincial, county or local (including GST unless the context requires otherwise); and

(d) any interest, charge, penalty, fee, fine or other amount of any kind assessed, charged or imposed on or in respect of the above.

Tax Invoice has the same meaning as in the GST Law.

Term means the period specified in clause 2.

Unauthorised Use means any:

(a) Use of any Standard Data, Enhancement or Commercialised Product otherwise than in accordance with this Agreement;

(b) breach of, or failure to comply with, clauses 6.2 and/or 6.3;

(c) breach of, or failure to comply with, the obligations under clause 6.4 by the Customer or its Personnel or sublicensees; or

(d) accessing, downloading, copying, reproduction, storage, editing, alteration, modification, adaptation, development, reverse-engineering, decompiling, exploiting, selling, letting for hire, offering by way of trade, exposing for sale or hire, distributing, publishing or communicating to the public, or any other Use, of the Standard Data, by the Customer or any other person that is not expressly authorised by this Agreement (including because the Customer has not complied with this Agreement), and includes any reasonably suspected Unauthorised Use.

Use means access, download, distribute, use, copy, print, and reproduce in any form and store.

You means the natural person who completes the Standard Data Order Form.

19.2 Interpretation

In this Agreement:

(a) words in the singular include the plural and vice versa;

(b) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;

(c) the verb “include” (in all its parts, tenses and variants) is not used as, nor is it to be interpreted as, a word of limitation;

(d) headings are inserted for convenience and do not affect the interpretation of this Agreement;

(e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;

(f) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning; and

(g) a reference to:

(i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority and (as the case may be) the person’s legal

personal representatives, successors, assigns and persons substituted by novation;

(ii) an Act or “law” includes legislation, regulations and other subordinate laws and any modifications or replacements of them;

(iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

(iv) a right includes a benefit, remedy, discretion or power;

(v) time is to local time in Canberra, Australia;

(vi) “$” or “dollars” is a reference to Australian currency;

(vii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties; and

(viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions.