

Ontario Geospatial Data Exchange Agreement

THIS AGREEMENT IS MADE IN DUPLICATE

THIS AGREEMENT is made effective as of this ____ day of _____.

B E T W E E N:

HER MAJESTY THE QUEEN IN THE RIGHT OF ONTARIO, AS REPRESENTED BY THE
MINISTER OF NATURAL RESOURCES

- and -

(insert member's name)

RECITALS:

WHEREAS the Crown is proposing an Ontario land-based data exchange as part of the Ontario Land Information Infrastructure;

AND WHEREAS the parties desire to form the Ontario Geospatial Data Exchange (“the Exchange”) in order to facilitate the sharing of Ontario’s land-based information based upon the pooling and distribution of data amongst its members;

AND WHEREAS the purpose of this Agreement is to promote the sharing of Geospatial data amongst Exchange members;

AND WHEREAS there is an expectation that all Geospatial data owned by Exchange members will be shared amongst other Exchange members

NOW THEREFORE, in consideration of the respective covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

DEFINITIONS:

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

“*Administrator*” means the person or entity designated by the Ministry of Natural Resources to administer the operational aspects of the Ontario Land Information Warehouse, accountable to the Membership and the Governing Board;

“Agent” means business or contractual relationship by which one person represents or acts for another with the latter’s authority;

“Allowable use” means “internal use” or “non-commercial use”;

“Copyright” means copyright as within the meaning of the **Copyright Act** R.S.C. c-30, as amended;

“Data” means digital databases or data layers which contain references to locations on the earth’s surface and may include, but are not limited to, aerial photographs, satellite imagery, digital data (in vector/raster formats) and metadata;

“Data Sets” means discrete databases or files containing information that may be subject to specific restrictions;

“Distributor” means a person or persons who reproduce copies of Data or Data sets subject to this agreement;

“Governing Board” means the Board of Representatives of Members of the Ontario Geospatial Data Exchange established pursuant to Section 1.0 of this Agreement;

“Internal use” means a use of Data by, or on behalf of, a Member where the Data is distributed to those who are employees or agents of the Member for purposes consistent with the organizations mandate and pertaining to the geographic area within the organization’s mandate;

“LIO” means Land Information Ontario, an organizational structure which is managed through the Land and Resource Cluster of the Province of Ontario and whose mandate is to coordinate the collection, mapping and integration of land related information in Ontario;

“Member” means an entity that executes the Ontario Geospatial Data Exchange Agreement in order to participate in the Ontario Geospatial Data Exchange;

“Metadata” means information supplied by a Member that describes the characteristics of the Data owned by that Member;

“Metadata Directory” means an Internet-based facility in which a Member lists and describes its Geospatial Data holdings in order to allow for search and query of those Data holdings over the internet;

“New Coverage” means new Data provided on an existing Data Set by describing details of an area not described in the original Data Set, or Data that is created to represent a particular feature that is not currently in an existing Data Set;

“Non-commercial use” means a use of Data by a Member where the Data is distributed in hard copy or raster-based electronic format, at any scale, to those who are not employees or agents of the Member for the purpose of carrying out the Member’s mandate and pertaining to the geographic area within the Member’s mandate either for free or priced at cost recovery basis;

“Raster-based format” means a format for Geospatial Data where objects are represented by small discrete elements that together constitute an image but not a format where Geospatial objects are described in terms of vectors which comprise them;

“Reproduce” means to copy, reproduce, or replicate “Data”, or any part thereof, to produce digital, computer-readable or hard copy information products;

“Value-added Products” means products based upon Data Sets supplied by Members which include improvements or new Data not found in the original Data Sets;

“Geospatial Data” means Data relating to a set of physical locations which may be area, line or point, that is referenced to the earth’s surface; or a two or three-dimensional object or extract;

“Tabular Data” means attributes describing Geospatial objects, or which make reference to Geospatial indices;

“Warehouse” means a data utility that houses all those Data Sets of the Members that are available for centralized distribution.

1.0 MEMBERSHIP:

1.1 The parties agree that the Governing Board may admit by entering an agreement substantially the same as this agreement as revised from time to time, new Members to the Exchange/parties to the Agreement, subject to the terms and conditions of this Agreement.

1.2 Each Member of the Exchange will be notified of the admission of new Members and may, upon 30 days notice, terminate their membership in the Exchange.

1.3 The parties to this Agreement are Members in the Exchange.

1.4 The following groups may apply as Members in the Exchange:

- Ministries of the Ontario Government and Agencies funded through an Ontario Government allocation;
- Agencies and Departments of the Federal Government of Canada, Agencies and Departments representing political jurisdictions out side of the Province of Ontario, and Regional and local municipal governments;
- Conservation Authorities, School Boards and Local Boards;
- Post-Secondary Educational Institutions;
- First Nations and Aboriginal communities or organizations representing First Nations and Aboriginal communities;
- Ministries, Agencies and Departments of provinces outside of Ontario

- Agencies and Departments of the Government of the United States – federal and state;
- 1.5 Non-governmental organizations may be admitted as Members in the Exchange, subject to the terms and conditions of this Agreement, provided the Governing Board determines that their membership would benefit the Exchange and would not, in view of the Board, be detrimental to the interests of any Member of the Exchange.
 - 1.6 An agency shall not be excluded from membership by virtue of not having Data Sets, which can be shared by other Members of the Exchange.
 - 1.7 All Members of the Exchange shall have equal rights and privileges, except as provided for in this Agreement or related licences or agreements.
 - 1.8 Unless renewed by the Governing Board, membership in this agreement shall have a term of 5 years from the date that the Member was admitted as a Member.

2.0 RIGHTS AND OBLIGATIONS OF MEMBERSHIP:

2.1 Each Member shall be subject to the following rights and obligations:

- a) Within 12 months of joining the Exchange, the Member will ensure the metadata of its holdings is accurate, up-to date and complete within the limits set out in the “Government of Ontario Information and Technology Standards” as set out in Schedule 1, as amended from time to time. These metadata holdings shall be entered into the Ontario Land Information directory or an equivalent, standardized spatial metadata directory that allows for the discovery of data holdings over the Internet
- b) Members agree to make reasonable efforts within the context of Members’ financial, legal and policy constraints, to comply with by-laws made by the Governing Board;
- c) Members shall have complete access to all Data holdings that would normally be made available through purchase, data sharing agreements or licensed access, without regard to any volume or other restraints, subject to any restrictions set out in this Agreement or set out in the associated licence;
- d) For the purpose of protecting the Exchange and its membership from unforeseen expenditures, the Governing Board, at its sole discretion, may impose a special usage charge, upon written notification to the Member, when a single party chooses to implement systems that imposes extraordinary workload on the Warehouse.
- e) Where a Member updates and/or makes corrections to data provided under this agreement, the Member must provide the updates and/or corrections to the provider of the Data within 2 months of making the update or correction.
- f) Members receiving updates and/or corrections to data from another Member shall make every effort to review, conduct a quality assurance process and incorporate those changes within six months, if warranted, and upon approval of the data

custodian, into the data and publish those updates to the LIO warehouse and/or provide timely notification to the Members.

- 2.2 A Member may upon prior written notice, request that the Exchange market the Member's Data to non-members of the Exchange, at the Member's sole cost and expense.
- 2.3 The membership, through the Governing Board, may collectively agree to acquire Data from a commercial source or some other non-Member for distribution within the membership.
- 2.4 The Governing Board may terminate a membership where termination is in the opinion of the Governing Board in the best interest of the Ontario Geospatial Data-Sharing Exchange.

3.0 PRIVACY IMPACT ASSESSMENT:

- 3.1 Each Data Set shall undergo a privacy impact assessment in accordance with the Privacy Impact Assessment Guidelines issued by Management Board of Ontario, as amended from time to time, prior to being shared through the clearinghouse or data-sharing agreement which may result in Data Sets being excluded from the data-sharing Exchange. Members not belonging to the Provincial Government, such as Municipal and Federal organizations and departments, must submit their Data Sets to a privacy impact assessment, as may be in existence at that time, in accordance with their respective governing guidelines

4.0 FUNDING:

- 4.1 The method of funding the storage and distribution of Data through the Warehouse is set out below:
 - a) Members, who are Ministries or Agencies funded through an allocation from the Government of the Province of Ontario, are exempt from membership fees. These agencies are providing contributions to the Ontario Land Information Infrastructure (OLII) in the form of annual levies through the Province. These funds are used to provide support to the OGDE;
 - b) Municipalities, Non-Government Organizations, First Nations and Aboriginal Communities and other non-profit organizations, with annual budgets of more than \$100 million, notwithstanding their schedule or non-profit status, other than Ministries or agencies of the Ontario government shall pay a \$3,000 annual membership fee for the second and subsequent years of membership;
 - c) Municipalities, Non-Government Organizations, First Nations and Aboriginal Communities and other non-profit organizations, with annual budgets of less than \$100 million shall pay a \$1,000 annual membership fee for the second and subsequent years of membership;

- d) Federal departments and agencies will be required to contribute up to \$50,000 per department, depending upon the scope and requirements of access to Data. The combined federal contributions shall not exceed \$500,000 annually;
- e) Conservation Authorities will be required to contribute \$1,000 per Authority. The combined Conservation Authority contributions shall not exceed \$36,000 annually. The management of the membership fees of individual Conservation Authorities will be the responsibility of Conservation Ontario;
- f) The Ontario Council of University Librarians (OCUL) will contribute up to \$50,000 on behalf of Ontario's universities;
- g) Colleges, post secondary institutions (not including universities) and other government funded research institutions will be required to contribute \$2,500.00 annually;
- h) Membership fees for other potential members and organizations will be determined by the OGDE Governing Board;
- i) A Member may apply in writing to have its membership fee waived and such membership fee may be waived, in limited circumstances only, and at the discretion of the Governing Board;
- j) No membership fees will be charged to join the exchange until April 1, 2003, (excluding Provincial Ministries and Agencies). Thereafter, membership fees are due May 1st for each subsequent year of membership. Fees may be prorated for the period between the anniversary of joining and the fee due date.

5.0 GOVERNANCE:

- 5.1 The LIO Steering Committee and governance structure shall be responsible, during the establishment of the Governing Board, for providing strategic direction and corporate commitment from key stakeholders in the development and refinement of the Exchange for, among other things related to the Exchange, membership, funding and intellectual property. Such responsibility shall terminate upon the establishment of the Governing Board.
- 5.2 The Governing Board shall be chaired by the Chief Information Officer of the Government of Ontario's Land Resource Cluster.
- 5.3 The chair shall appoint the members of the Governing Board for an initial term of one year or less as follows:

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|----------------------|---|
| Ontario Government | <ul style="list-style-type: none"> • 8 representatives selected from the Inter-Ministerial Committee on Land Information |
| Federal Government | <ul style="list-style-type: none"> • 3 representatives |
| Municipal Government | <ul style="list-style-type: none"> • 3 representatives |

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| Conservation Authorities | <ul style="list-style-type: none"> • 1 Conservation Authorities representative |
| Education | <ul style="list-style-type: none"> • 1 colleges & universities representative |
| Industry | <ul style="list-style-type: none"> • 1 Geomatics sector representative • 1 utilities representative |
| First Nations and Aboriginal Communities | <ul style="list-style-type: none"> • 1 representative |
| NGOs | <ul style="list-style-type: none"> • 1 representative |

5.4 Membership on the Governing Board shall subsequently be comprised of the following:

| | |
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| Funding Ministries | <ul style="list-style-type: none"> • 6 representative from selected from the Inter-Ministerial Committee on Land Information |
| Provincial Agencies funded through a Government allocation | <ul style="list-style-type: none"> • 1 representative |
| Federal Government | <ul style="list-style-type: none"> • 3 representatives |
| Local/Municipal Governments | <ul style="list-style-type: none"> • 4 representatives |
| Conservation Authorities | <ul style="list-style-type: none"> • 1 representative |
| Education | <ul style="list-style-type: none"> • 1 colleges & universities representative |
| Industry | <ul style="list-style-type: none"> • 2 representatives |
| First Nation & Aboriginal Community | <ul style="list-style-type: none"> • 1 representative |
| NGO | <ul style="list-style-type: none"> • 1 representative |

5.5 After the initial term, members of the Governing Board shall have a term of three years.

The roles and responsibilities of the Governing Board are set forth below:

- a) Provide executive-level direction to the Ontario Geospatial Data Exchange;
- b) Represent membership interests;

- c) Admit new Members to the Ontario Geospatial Data-Exchange by entering into an agreement substantially on the same terms and conditions as this agreement as amended from time to time;
- d) The Governing Board may terminate the membership of any Member where in the opinion of the Governing Board termination is in the interest of the Ontario Geospatial Data Exchange;
- e) Communicate Exchange activities and directions to its stakeholder communities and the general public;
- f) Lead in the development of the data-sharing Exchange infrastructure which includes, but is not limited to, policy, plans, operational guidelines, methodologies and standards;
- g) Represent the membership in decisions relating to the inclusion or exclusion of agencies seeking to join the Ontario Geospatial Data Exchange;
- h) Mediate the resolution of disputes arising out of the intellectual property, licencing restrictions, use or distribution of Data belonging to Exchange Members;
- i) Be responsible for the financial policies, membership fees, and fiscal health of the Exchange;
- j) Levy special fees for Members whose extraordinary use of Exchange technology resources warrant it;
- k) Ensure integration with the Province's Information and Information Technology strategy and implementation;
- l) Promote strategic partnerships amongst Members to optimize the cooperation and coordination of their efforts;
- m) Ensure that the Ontario Geospatial Data Exchange monitors and conforms to the requirements of privacy legislation and guidelines;
- n) May make by-laws with respect to the operation of this Agreement and the subject matter thereof;
- o) The Governing Board will use reasonable efforts to encourage organizations to identify and make available to Exchange Members as much Geospatial information as possible, within the constraints of the law, including but not limited to the contractual or quasi-contractual obligations, the Freedom of Information and Protection of Privacy Act legislation, and the legislation governing the sharing of Data by the various participating Members ;
- p) Encourage and promote the adoption, and use, of provincial data standards within the Exchange for all Geospatial and attribute information, where possible.

6.0 DATA DISTRIBUTION and MAINTENANCE:

- 6.1 Each Member shall at its sole discretion determine the distribution mechanism by which Data is to be made available to other Members of the Exchange.

- 6.2 The parties agree that unless otherwise specified, the Administrator shall administer the Warehouse.
- 6.3 Each Member will list and describe its Geospatial data holdings available to other Members in the Metadata directory, including, but not restricted to all relevant information held in the Ontario Land Information Directory, all licences, rules and restrictions to be applied to the Members data while stored in the Ontario Land Information Warehouse and access protocols that are to be applied to each Data Set.
- 6.4 Where a Member indicates in writing, to the Administrator, data may be distributed by the Administrator on behalf of Members through the Warehouse. When providing Data to the warehouse, a Member will specify whether the Data is either General Data or Restricted Data.
- 6.5 The Administrator is the agent for the distribution and licensing of data to members. The Administrator is approved to distribute and license Data to authorized Members.
- 6.6 The Administrator may, on behalf of the Exchange or its Members, but is under no obligation to do so, institute and defend proceedings at law connected with, relating to or arising out of the affairs of the Exchange. The parties to this agreement appoint the Administrator as its attorney to execute any document which it may consider necessary or desirable to enable it to fully carry out the powers granted to it. Subject to the Agreement, and agreements relating to the admission of new Members, the Administrator may settle, compromise or discontinue any such proceeding and in connection with any or all of the foregoing shall have the right as attorney of parties to this agreement. The Administrator shall be entitled to charge as a disbursement, all legal and other related costs or expenses incurred hereunder.
- 6.7 The exact distribution options for each Data Set shall vary according to the requirements and restrictions placed on it under this Agreement and the Governing Board based on the following:
- a) Volume of Data
 - b) Periodicity of re-distribution
 - c) Details of the data sharing arrangements with the requestor
 - d) The terms of this Agreement
- 6.8 Any distribution alternatives which introduces a significant increase in operational costs to the Data Exchange, shall require prior written approval by the Governing Board and shall be the financial responsibility of the Member requesting the service.
- 6.9 Data requests and extraction of data from the LIO Warehouse will be reviewed on an annual basis. The Governing Board will determine if those requests are excessive and may charge that Member an additional fee.
- 6.10 Any maintenance responsibilities associated with a Data Set shall not change upon a new Member joining the Exchange, unless otherwise agreed to by the affected parties. The Warehouse publication facility shall permit authorized maintainers of the Data to publish updates for the layers and area for which they are authorized, and restricts updates to only those who are authorized to make them. The currency of Data will be automatically reflected in the corresponding metadata.

7.0 GENERAL DATA

- 7.1 General Data means all Intellectual Property that is accessible to the general public and all members. Where Data has been identified as General (hereinafter referred to as “General Data”), the Member providing the General Data agrees that the terms and conditions of this agreement shall apply for the use of the data by all Members. Access to and use of the Data by other Members will be in accordance with the terms and conditions of this agreement.
- 7.2 A Member accessing the General Data agrees to use and distribute the Data only in accordance with the terms and conditions set out in this agreement.
- 7.3 A Member providing the General Data and the Member accessing the General Data agree that the licence agreement comes into effect when the Member seeking to access the Data electronically agrees to the terms of the licence or accesses the Data, whichever occurs first.
- 7.4 The Member providing the General Data and accessing the General Data agree and acknowledge that the licence agreement is between the Member providing the Data and the Member accessing the Data and that the Administrator is only acting as an agent for the Member providing the Data.
- 7.5 The Member providing the General Data agrees that it can be distributed to all Members of the Exchange without any restrictions, other than those set out in this agreement, by the Administrator, acting as agent for the Member.
- 7.6 The Administrator shall keep a record of the licence under which the General Data is provided, and each accession of the Data, and acceptance of the licence, and each transaction relating to the distribution of the Data, which record cannot be altered.
- 7.7 Where a Member providing the General Data does not have a licence or policy related to that Data, the use of that Data shall be restricted to the terms and conditions of the General Data in this agreement. Members using such Data will respect the copyright of the Member that provided the Data.

8.0 RESTRICTED DATA

- 8.1 Restricted Data means all Intellectual Property either personal or sensitive not accessible to the general public or member of the OGDE, unless authorized by the Member owning the Intellectual Property. Where Data has been identified as Restricted (hereafter referred to as “Restricted Data”), by the Member providing the Data, that Member will identify in writing any restrictions on its distribution and use to the Administrator, and will provide in an electronic form, acceptable to the Administrator, a copy of the Member’s licence setting out the terms and conditions for access and use of the Data by other Members, before the Administrator grants access to the Data.
- 8.2 The Administrator will only distribute the Restricted Data in accordance with the restrictions set out in writing by the Member providing the Restricted Data.
- 8.3 The parties agree that the restrictions will come into force on the later of the dates and times that the Administrator receives or acknowledges receipt of the restrictions in writing.

- 8.4 The Administrator will set out the terms and conditions relating to the use of Restricted Data, in a licence in electronic form.
- 8.5 The Member accessing the Restricted Data agrees to use and distribute the Restricted Data only in accordance with the terms and conditions set out in the licence agreement, provided in electronic form by the Administrator on behalf of the Member providing the Restricted Data.
- 8.6 The Member providing the Restricted Data and the Member accessing the Restricted Data agree that the licence agreement comes into effect when the Member seeking to access the Data electronically agrees to the terms of the licence or accepts the Data, whichever comes first.
- 8.7 The Member providing the Restricted Data and the Member accessing the Restricted Data agree and acknowledge that the licence agreement is between the Member providing the Data and the Member accessing the Data and that the Administrator is acting only as an agent for the Member providing the Data.
- 8.8 The Administrator shall keep a record of the licence used to provide the Restricted Data and acceptance of the licence and each transaction relating to the distribution of Restricted Data which record cannot be altered.

9.0 INTELLECTUAL PROPERTY:

- 9.1 Each Member providing Data warrants to the best of its knowledge that it:
 - a) is the sole owner of all rights in the Data; or
 - b) has all rights in the Data required to enter into and perform its obligations under this agreement, subject to the terms and conditions set out in the Member's licence for another Member's access to and use of the Data
- 9.2 A Member shall retain all Copyright and other rights pertaining to the Data provided by the Member, used or distributed pursuant to this Agreement and retains Copyright of that portion of the information or other product comprising or incorporating the said Data, unless otherwise agreed to by the affected parties.
- 9.3 The parties agree and acknowledge that neither this Agreement or licence issued pursuant thereto constitutes a transfer of copyright from the Member providing the Data, under this Agreement.
- 9.4 Where a Member provides new Data, either a new Geospatial layer, or a new tabular attribute for a Geospatial object, the provider shall retain intellectual property of the new Data, unless other intellectual property arrangements have been made with another organization.
- 9.5 A Member borrowing a Data Set with the intent of making corrections or updates to that Data Set, or creating value-added products derived from that Data Set, shall provide notice to the Member holding the Copyright to the Data Set of its intention to make a claim on the intellectual property prior to making changes.
- 9.6 Copyright shall be attributable, at least partially, to the original owner of Data used to create a value-added product. The percentage shall be determined in part, by the extent to which the original Data can be derived from the value-added product. This

shall be in direct proportion to the amount of Data in the new product, which is based on the original Data Set. The original owner shall be entitled to benefits based on that percentage.

- 9.7 Where data collection extends the coverage of a Data Set, the collector of Data describing to new areas shall be able to claim partial intellectual property of that Data Set in the event that the coverage is substantial i.e., where it exceeds 15% of the entire original Data Set, and meets or improves the current standard. In all cases the Member who provided the original Data Set shall be given special consideration, and recognition for developing the data model and database design, and for any other pioneering aspects of the original data collection. A collector of new data coverage shall be entitled to a perpetual license to use and license the use of the Data that it collected, without regard to its intellectual property rights to the entire Data Set. Assignment of intellectual property and ownership for these Data is subject to any other licencing arrangement made with another organization prior to the collection of such information.
- 9.8 Where two or more Members collaborate in the creation of a Data Set, which shall be referred to as a Joint Undertakings, the Joint Undertaking shall be handled in the same manner as data collections by a single member, except that combined efforts shall be considered when determining the substantiality of the improvement. Any intellectual property rights conveyed to the undertaking shall be divided according to the percentage specified in the joint request. Requests shall not be entertained by individual Members seeking intellectual property for joint undertakings or their corresponding role in such undertakings. Assignment of intellectual property and ownership for these Data is subject to any other licencing arrangement made with another organization prior to the collection of such information.

10.0 USE OF DATA:

- 10.1 Members receiving Data agree to restrict or limit use of the Data in accordance with this Agreement, and the licence or other agreement entered into between the Member providing and Members using Data Sets.
- 10.2 Unless otherwise provided for in this Agreement or other agreement, no part of the Data may be copied, published, disseminated, or used in any form or by any means other than for the licensee's allowable use.
- 10.3 Without limiting the scope of 10.2, a Member will:
- a) Not provide, share or disseminate Data to other Exchange Members, where the Data has come into the possession of the Member as a result of receiving Data from another Member under this Agreement
 - b) Be permitted to use the Data received from another Member to its financial gain to expand its range of services offered, provided the Data shall not be sold, used, or incorporated into a product which is sold
- 10.4 No Member shall state, indicate or imply that it represents or acts as an agent of any other Member except for the Administrator.

- 10.5 The Member accepting the Data agrees that it accepts the Data on an “as is” basis:
- a) As to the merchantability or fitness for its purpose
 - b) As to its accuracy or completeness
- 10.6 The Member providing the Data represents and warrants that it is the producer of the Data and that it has a right to grant access through the Administrator and licence the Data, unless that Member has been granted privileges to provide the Data on behalf of another Member who is the actual licensor of that Data.
- 10.7 The Exchange assumes no obligation or liability whatsoever for the provision of updates or corrections to the Data or the provisions of notices thereof to the parties receiving the Data.
- 10.8 The Administrator assumes no obligation or liability whatsoever for the provision of updates or corrections to the Data or the provisions of notices thereof to the parties receiving the Data.

11.0 RESOLUTION OF DISPUTES RELATING TO INTELLECTUAL PROPERTY:

- 11.1 The Governing Board may upon the request of its Members mediate intellectual property disputes affecting Members or appoint a mediator to mediate such dispute.
- 11.2 The Governing Board may conduct the mediation or appoint a committee of one or more Members or appoint another person to conduct the mediation.
- 11.3 A party to the dispute shall not participate in the mediation as a mediator.
- 11.4 Members agree to participate in mediation in the event of a dispute and will cooperate with the Governing Board in the conduct of the mediation.
- 11.5 Unless otherwise agreed to by the parties to the dispute, the Governing Board, mediator or appointed Member committee will commence mediation within 30 days of receiving written notice of the request for mediation.
- 11.6 Unless otherwise agreed to by the parties to the dispute, and where an agreement resolving the dispute has not been reached, the Governing Board, mediator or appointed Member committee will make recommendations to the parties on the resolution of the dispute.
- 11.7 The Governing Board, mediator or appointed Member committee will take into account the terms and conditions set out in this agreement.
- 11.8 Where a Member has entered into a cooperative arrangement, whether oral or written, with the owner of a Data Set, for the purpose of collecting new Data, making corrections, or developing value-added products, their Agreement shall have the highest precedence in adjudicating claims for intellectual property.
- 11.9 The Governing Board, mediator or appointed Member committee shall not recommend the award of any percentage of intellectual property rights to an applicant, who made corrections to a Data Set. Notwithstanding the foregoing, where the volume of corrections is extremely high in that the count of changed fields, and/or the volume of valuable descriptive data exceeds 30% of the original Data Set, and/or corrections improve the Data Set standard as determined by the Governing

Board, a percentage of the intellectual property rights in the Data Set with the changed fields and/or additional descriptive Data may be awarded to a claimant. Such a percentage shall be substantially less than that considered for similar new coverage Data collection efforts. A member who submits corrections to a Data Set shall not retain any special privileges to use such Data – other than its rights as a Member of the Exchange.

- 11.10 The legal rights and obligations of the Members with respect to the resolution of disputes concerning the Data that is under dispute cannot be settled in such a way that may result in breach of any legal obligations with respect to the Data of the Member providing the Data, nor can they be settled in such a way that the Member may incur any legal liability as a result of implementing the recommended course of action from mediation.

12.0 LIABILITY AND INDEMNITY:

- 12.1 Subject to any approval under International, Federal, Provincial or Municipal law, each party will release and hold harmless the other parties, their officers, servants and agents against any claims, demands, losses and damages arising from or attributable to the provisions of or use of the Data.
- 12.2 Each party will release and hold harmless the Administrator, its officers, servants and agents against any claims, demands, losses and damages arising from or attributable to the provisions of or use of the Data.
- 12.3 Neither the Exchange nor the Administrator make any warranties with respect to the Data and the parties agree that the Data is made available on an "as is" basis, without any other warranties, representations or conditions of merchantable quality, fitness for a particular purpose, or those arising by law or by statute, or by usage of trade or course of dealing. The entire risk as to the results and performance of the Data is assumed by the Members accepting the Data, including without limitation, the risk as to whether or not the Data contains bug errors and/or other problems that could cause system failures. Neither the Exchange nor the Administrator shall have any liability to the party receiving such Data or any other person or entity for any claims, actions, loss, damage, including, without limitation, loss of revenue or profit or savings, lost or damaged Data or other commercial or economic loss or any indirect or incidental, special or consequential damages whatsoever relating to the use of the Data even if either has been advised of the possibility of such damages; or for claims by a third party, nor shall the suppliers, agents, employees or representatives of either the Exchange, and Members of the Exchange, or the Administrator have such liability.
- 12.4 In no event will the Exchange, any of its Members, or the Administrator be liable or responsible for any loss of profits, revenue or earnings, claims by third parties, or for any economic, indirect, special, incidental, consequential or exemplary damage resulting from any errors, inaccuracies or omissions in the Data. In no event will the Exchange, any of its Members and/or the Administrator's liability for any such errors, inaccuracies or omissions on any particular claim, proceeding or action, exceed the actual consideration paid by the claimant for the materials to which this documentation relates. Save and except for the liability expressly provided for above, the Exchange, any of its Members, or the Administrator shall have no

obligation, duty or liability for negligence. The limitations, exclusions and disclaimers expressed above shall apply irrespective of the nature of any cause of action, demand or action, including but not limited to breach of contract, negligence strict liability, tort or any other legal theory, and shall survive any fundamental breach.

- 12.5 The Member who accepts Data shall indemnify and save harmless any member who provides Data, its servants, agents, and contractors, including but not limited to the Administrator and the Exchange, from and against any claim, demand, or action, irrespective of the nature of the cause of the claim, demand or action, alleging loss, costs, expenses, damages, or injuries, including injuries resulting in data arising out of the Members uses of the Data or in any way relating to this agreement, including breach of any term of this Agreement .

13.0 ROYALTIES:

- 13.1 There are no royalties or other fees payable for allowable use of Data.
- 13.2 Royalties and other fees for uses other than allowable use of Data shall be set out in the licensing agreements relating to such Data.

14.0 TERM AND TERMINATION:

- 14.1 This Agreement shall commence after approval and on the date the Agreement is fully executed by all parties joining the Exchange and shall remain in effect for five years or until such time as any party wishes to terminate its involvement in the Exchange.
- 14.2 A party may terminate, within 30 days, its participation in the Exchange and cease to be a Member, after providing written notice to the Governing Board.
- 14.3 Termination for cause shall take effect immediately after the Governing Board issues a notice of violation to the Member and such Member fails to cure the violation within 10 days of receiving such notice.
- 14.4 Within 30 days of the termination date, the Member, whose membership in the Exchange has been terminated, shall return all Data, including updates or improved Data, to the Member that supplied the Data and shall delete and over-write all back-ups and stored information obtained from the Exchange.
- 14.5 Each Member agrees not to sell, disclose, or make available any Data, updates of Data, or improved Data, obtained through the Exchange, to anyone subsequent to termination of the Agreement unless required to do so by law.

Where an owner of Data ceases to be a Member of the Exchange, all users of the Data provided by the owner, shall continue to have the ability to use the Data in accordance with the terms and conditions of this Agreement and the relevant licence.

15.0 REPRODUCTION:

15.1 The Member may use and make copies of the Geospatial Data for internal or non-commercial end-use only. The Member is required to display the following text on all reproductions of the Geospatial Data;

Produced by (insert member name) with Data supplied under Licence by Members of the Ontario Geospatial Data Exchange.

16.0 FREEDOM OF INFORMATION:

16.1 The parties acknowledge that Members and/or the Administrator may be subject to the International, Federal, Provincial or Municipal information and privacy legislation, or similar legislation (hereafter referred to as “FOI Legislation”) and may be compelled pursuant to that legislation to disclose Data provided pursuant to this Agreement.

16.2 Where the Administrator or Member, subject to legislation, receives a request for Data provided under this Agreement, the Administrator or Member will:

- a) Immediately notify the Member holding the intellectual property rights for that Data that a request has been made through FOI Legislation for access to that Data
- b) Inform the requestor of identity of the Member who owns the intellectual property rights in the Data or who provided the Data
- c) Transfer the request to the Member holding the intellectual property rights of the Data so they may take the lead to grant or deny access and participate in the appeal process as set out in the FOI Legislation.

17.0 ENTIRE AGREEMENT:

17.1 These documents, schedules and licences as may be amended, from time to time, for the Data constitute the entire Agreement between the parties. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid.

18.0 AMENDMENTS:

18.1 No variation, modification, change or amendment to this Agreement shall be valid or deemed to be valid unless in writing and signed by each party.

19.0 NOTICES:

19.1 All notices, demands, designations, certificates, requests, offers, consents, approvals and/or other instruments given pursuant to this Agreement shall be in writing and shall be validly given when sent by registered or certified mail, or hand delivered, (i) addressed to the Governing Board at the address set forth herein, and (ii) addressed to the Member at its address set forth herein. The parties may specify any address as its address for the purpose of notices under this Agreement by giving 15 days written notice to the other parties. The parties agree to mutually designate individuals as their respective representatives for purposes of this Agreement.

To the Member at :
(enter contact info. Name, position,
address)

To the Chairperson of the Governing Board at:
Chief Information Officer, Land and
Resources Cluster
Ministry of Natural Resources,
P.O. Box 7000, 300 Water Street,
4th Floor, North Tower,
Peterborough, Ontario K9J 8M5

20.0 CONFLICT OF INTEREST:

20.1 If during the term of the Agreement a Member becomes aware of an actual or potential relationship which may be considered a conflict of interest, the Member shall forthwith, in writing, notify the Governing Board.

21.0 NO AGENCY RELATIONSHIP:

21.1 Nothing in this Agreement creates the relationship of principle and agent, employer or employee, partnership or joint venture, between the parties.

22.0 GOVERNING LAW:

22.1 This Agreement shall be governed by and construed in accordance with the laws in force in the Province of Ontario.

SCHEDULE 1**Ontario Geospatial Data Exchange
Organization Information**

| 1. ORGANIZATION INFORMATION | |
|--------------------------------------|--|
| 1.1 Organization Name*: | |
| 1.2 Organization Short Name:* | |
| 1.3 Organization Description: | |
| 1.4 Organization French Name: | |
| 1.5 Organization French Short Name: | |
| 1.6 Organization French Description: | |
| 1.7 Organization Group Name: | |

| 2. AGREEMENT CONTACT INFORMATION | |
|---|--|
| 2.1 First Name*: | |
| 2.2 Middle Name: | |
| 2.3 Last Name*: | |
| 2.4 Position/Title | |
| 2.5 Street Name*: | |
| 2.6 City* | |
| 2.7 Province*: | |
| 2.8 Postal Code*: | |
| 2.9 Country: | |
| 2.10 Tel. Number*: Ext.: | |
| 2.11 Employee E-mail*: | |

| 3. TECHNICAL CONTACT INFORMATION | |
|---|--|
| 3.1 First Name*: | |
| 3.2 Middle Name: | |
| 3.3 Last Name*: | |
| 3.4 Position/Title | |
| 3.5 Street Name*: | |
| 3.6 City* | |
| 3.7 Province*: | |
| 3.8 Postal Code*: | |
| 3.9 Country: | |
| 3.10 Tel. Number*: Ext.: | |
| 3.12 Employee E-mail*: | |

| 4. ORGANIZATION CONTACT INFORMATION | |
|--|-------------------------|
| 4.1 First Name*: | |
| 4.2 Middle Name: | |
| 4.3 Last Name*: | |
| 4.4 Position/Title | |
| 4.5 User_id* | |
| 4.6 Password* | |
| 4.7 Street Name*: | |
| 4.8 City* | |
| 4.9 Province*: | |
| 4.10 Postal Code*: | |
| 4.11 Country: | |
| 4.12 Tel. Number*: Ext.: | |
| 4.13 E-mail*: | |
| 4.14 Is the users information available in the Provincial Directory (WIN): | Yes No |

| 5. EXCHANGE INFORMATION | |
|----------------------------------|--|
| 5.1 Exchange Name*: | |
| 5.2 Exchange Short Name*: | |
| 5.3 Exchange Description | |
| 5.4 Exchange French Name: | |
| 5.5 Exchange French Short Name: | |
| 5.6 Exchange French Description: | |

| 6. USER INFORMATION <i>(Please fill out the information below for each user from your organization)</i> | |
|--|-------------------------|
| 6.1 First Name*: | |
| 6.2 Middle Name: | |
| 6.3 Last Name*: | |
| 6.4 Organization/Company Name | |
| 6.5 User_id* | |
| 6.6 Password* | |
| 6.7 Address 1*: | |
| 6.8 Address 2* | |
| 6.9 Province*: | |
| 6.10 Postal Code*: | |
| 6.11 Country: | |
| 6.12 Tel. Number*: Ext.: | |
| 6.13 E-mail*: | |
| 6.14 Are you listed in the Provincial Directory?: | Yes No |

SCHEDULE 2**Ontario Geospatial Data Exchange****General Data - Product Description**

| 1. CUSTODIAN ORGANIZATION INFORMATION | |
|--|--|
| 1.1 Organization Name*: | |
| 1.2 Organization Short Name*: | |

| 2. EXCHANGE INFORMATION | |
|--------------------------------|--|
| 2.1 Exchange Short Name*: | |

| 3. CUSTODIAN INFORMATION | |
|---|-------------------------|
| 3.1 First Name*: | |
| 3.2 Middle Name: | |
| 3.3 Last Name*: | |
| 3.4 Organization/Company Name | |
| 3.5 User_id* | |
| 3.6 Password* | |
| 3.7 Address 1*: | |
| 3.8 Address 2* | |
| 3.9 Province*: | |
| 3.10 Postal Code*: | |
| 3.11 Country: | |
| 3.12 Tel. Number*: Ext.: | |
| 3.13 E-mail*: | |
| 3.14 Are you listed in the Provincial Directory?: | Yes No |

| 4. DATA PRODUCT NAME: _____ | |
|---|-------------------------|
| 4.1 Description: | |
| 4.2 What is the Publication frequency for this product: (0-365 Days) | |
| 4.3 Do you want to receive email reminders when an update is due? | Yes No |
| 4.4 How many days after the due date should a warning notification be sent? (0-365 days) | |
| 4.5 How many warning messages should be sent using the time interval indicated in section 4.4 ? | |
| 4.6 Should notifications also be sent to the Custodian? | Yes No |
| 4.7 Is this a Sliding Schedule? | Yes No |

Please define the default access for this data product

| DEFAULT ACCESS PRIVILEGES | |
|--|---|
| 5. DATA PRODUCT NAME: _____ | |
| 5.1 Attribute Scope (Select one) | <input type="checkbox"/> Full <input type="checkbox"/> Subset <input type="checkbox"/> Graphics |
| 5.2 Include Sensitive Data | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5.3 Include Personal Information | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5.4 Is there a Geographic Restriction? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5.5 If Yes define the Geographic restriction | Name Geography Lat/Long coordinates |

| 6.0 SUPPLIER CONTACT INFORMATION | |
|---|---|
| 6.0.1 Supplier Name* | |
| 6.0.2 Supplier Source Database version number* | |
| 6.0.3 Standard NRVIS Interchange Format Version Number* | |
| 6.1 SUPPLIER AREA OF RESPONSIBILITY* | |
| 6.1.1 What is the Area of responsibility for this supplier. <i>(Select one)</i> | <input type="checkbox"/> Named Geography What is the named geography: _____ <input type="checkbox"/> Province <input type="checkbox"/> Other Additional Information |
| 6.1.2 How many Object ID's are required: | |

6.2 SUPPLIER CONTACT INFORMATION *(Provide a minimum of 1 contact, maximum 3 including custodian)*

| | |
|---|-------------------------|
| 6.2.1 First Name*: | |
| 6.2.2 Middle Name: | |
| 6.2.3 Last Name*: | |
| 6.2.4 Organization/Company Name | |
| 6.2.5 Position Title: | |
| 6.2.6 User_id* | |
| 6.2.7 Password* | |
| 6.2.8 Address 1*: | |
| 6.2.9 Address 2* | |
| 6.2.10 Province*: | |
| 6.2.11 Postal Code*: | |
| 6.2.12 Country: | |
| 6.2.13 Tel. Number*: Ext.: | |
| 6.2.14 E-mail*: | |
| 6.2.15 Are you listed in the Provincial Directory?: | Yes No |

6.2 SUPPLIER CONTACT INFORMATION *(Provide a minimum of 1 contact, maximum 3 including custodian)*

| | |
|---|-------------------------|
| 6.2.1 First Name*: | |
| 6.2.2 Middle Name: | |
| 6.2.3 Last Name*: | |
| 6.2.4 Organization/Company Name | |
| 6.2.5 Position Title: | |
| 6.2.6 User_id* | |
| 6.2.7 Password* | |
| 6.2.8 Address 1*: | |
| 6.2.9 Address 2* | |
| 6.2.10 Province*: | |
| 6.2.11 Postal Code*: | |
| 6.2.12 Country: | |
| 6.2.13 Tel. Number*: Ext.: | |
| 6.2.14 E-mail*: | |
| 6.2.15 Are you listed in the Provincial Directory?: | Yes No |

6.2 SUPPLIER CONTACT INFORMATION *(Provide a minimum of 1 contact, maximum 3 including custodian)*

| | |
|---|-------------------------|
| 6.2.1 First Name*: | |
| 6.2.2 Middle Name: | |
| 6.2.3 Last Name*: | |
| 6.2.4 Organization/Company Name | |
| 6.2.5 Position Title: | |
| 6.2.6 User_id* | |
| 6.2.7 Password* | |
| 6.2.8 Address 1*: | |
| 6.2.9 Address 2* | |
| 6.2.10 Province*: | |
| 6.2.11 Postal Code*: | |
| 6.2.12 Country: | |
| 6.2.13 Tel. Number*: Ext.: | |
| 6.2.14 E-mail*: | |
| 6.2.15 Are you listed in the Provincial Directory?: | Yes No |

EXCEPTIONS: NON DEFAULT USER

| | | | | | | |
|------------------------|---|---|---|---------------------------------|---------------------------------------|---|
| 7. PRODUCT NAME: _____ | | | | | | |
| | Attribute Scope (Select One) | | | | | |
| USER_ID | FULL <input type="checkbox"/> | SUBSET <input type="checkbox"/> | GRAPHICS <input type="checkbox"/> | SENSITIVE DATA Yes/No | PERSONAL INFORMATION Yes/No | GEOGRAPHIC INFORMATION Yes/No |
| | | | | | | |
| | | | | | | |
| | | | | | | |