

DATA EXCHANGE AGREEMENT

BMGS File No: _____

THIS AGREEMENT dated for reference the ___ day of _____, 2003.

BETWEEN: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, represented by the **Ministry of Sustainable Resource Management**.

(Hereinafter referred to as the "Province")

at the following address:

Base Mapping and Geomatic Services Branch
2nd Floor – 395 Waterfront Crescent
Victoria, British Columbia
V8T 5K7
Tel: (250) 387-6316
Fax: (250) 356-7831

AND: [insert Company name]

(Hereinafter referred to as the "Company")

at the following address:

[insert Company address]
Tel: ()
Fax: ()

WHEREAS:

- A. The parties wish to agree on the supply and sharing of Vegetation Resources Inventory mapping data (VRI) and Base Mapping Terrain Resource Information Management data (TRIM), and on the manner in which the Company will supply and share operational data updates to the Province to enhance and maintain the future integrity of VRI and TRIM products in exchange for the Company receiving from the Province digital mapping products without cost to the Company;
- B. The parties wish to streamline business processes as related to mapping between industry and government. The parties intend that the benefits of this agreement to both industry and government will be reflected in the reduction of duplication and therefore cost;
- C. As an example, using GPS technology, the Company will capture changes to the Company's operational land base regarding cut blocks and roads. The Company will then forward this updated information to the Province in digital form so that the Province can import the information directly into its digital mapping system(s) without the Province having to recapture the information. In return, the Company will receive use of the Province's digital mapping products at no cost to the Company;
- D. The parties wish this Agreement to be the first step in developing a framework for maintenance and perpetuating accurate and up to date mapping data for government and industry to plan and manage forestry resources;
- E. The Province is responsible for the production, update, and maintenance of VRI and TRIM;
- F. On the terms and conditions set forth in this Data Exchange Agreement the Company will provide the updated data to the Province in exchange for the Province providing to the Company digital map files and a license to use the same in all applications of the Company's business; and
- G. The Province is the designer and developer of VRI and TRIM data.

THIS AGREEMENT witnesses that in consideration of the mutual promises set forth in this Agreement, the parties to this Agreement hereby covenant promise and agree with each other as follows:

TERMS OF AGREEMENT

1. THE PRODUCTS

1.1 Products

In this Agreement, "Products" means VRI and TRIM data products in the form of digital maps consisting of position files, representation files and attribute files described in Schedule "A".

1.2 Exchanged Data

In this Agreement, "Exchanged Data" means updated mapping data that the Company has available concerning the Company's area of operations on the delivery dates specified in Schedule "C".

1.3 Grant of License

The Province hereby grants to the Company a non-exclusive license (the "License") to use of the Products for operational business use.

1.4 Restrictions

The License is subject to the following restrictions:

- (a) The Company shall not assign the License without prior written approval from the Province;
- (b) Except for public relation purposes, the Company shall not distribute, give away or sell the Products, or copies of the Products, outside of the Company's operational business use, without prior written approval from the Province.

1.5 Unauthorized Grants

The Company shall not use the Products other than as provided in this Agreement, except as required by law.

2. THE PRODUCTS OWNERSHIP AND USE

2.1 Ownership

- (a) The Company acknowledges that the Province has and retains full right and title to the Products, the name of the Products and all copies of the Products, and the Company agrees that it shall not contest the validity of the Province's ownership. The Province retains the right to license the Products covered by this License to other participants.
- (b) The Province, as owner, has exclusive copyright in the Products.
- (c) The Province may register its copyright under the Copyright Act, but failure to do so does not constitute a waiver of its copyright.
- (d) Nothing in this Agreement constitutes an assignment of the Province's copyright.
- (e) The Company hereby grants to the Province a non-exclusive license to use the Exchanged Data, and the Company and the Province shall each have full and equal rights to use, sell, distribute or license the Exchanged Data in whatever manner each wishes.

2.2 Permitted Use

This license is granted for the sole purpose of permitting the Company to use the Products in its business activity and for no other purpose whatsoever.

2.3 Restrictions on Use

- (a) **Unauthorized Use.**

The Company shall not use the Products except as provided in this Agreement.

- (b) **Copies**

The Company shall not duplicate the Products except for the following:

1. The Company may make copies for backup purposes or for business usage applications. The Company may translate the Products into other formats and/or media. These "reformats" shall be subject to the same restrictions as the Products under this Agreement.

2.4 Company Covenants

- (a) The Company acknowledges that the Products contain information proprietary to the Province.
- (b) If any person or entity acquires the Products by, through or under the Company, the Company will use its reasonable best efforts to prevent any unauthorized use of the Products by such person or entity.

2.5 Province Covenants

- (a) The Province acknowledges that the Exchanged Data contains information proprietary to the Company;
- (b) If any person or entity acquires the Exchanged Data by, through or under the Province, the Province will use its reasonable best efforts to prevent any unauthorized use of the Exchanged Data by such person or entity.

3. TERM

3.1 Term

The term of the License (the "Term") will commence upon the date of execution of this Agreement and will continue until 30 days after either party delivers to the other party a written Notice of Intention to Termination of this Agreement.

3.2 Termination

This Agreement shall terminate 30 days after the date upon which either party delivers to the other a Notice of Intention to terminate this Agreement.

4. DATA EXCHANGE

4.1 Supply of Exchanged Data by the Company

On the delivery dates and in the manner specified in Schedule "C" the Company will, without cost to the Province, deliver to the Province the most current version of the Exchanged Data concerning Company operations within the areas covered by the maps described in Schedule "B".

4.2 Delivery by the Company

The Company shall deliver the updated Exchanged Data to the Province subject to the following conditions:

- (a) On the dates described in Schedule "C" the Company shall package, ship, deliver or transmit the updated Exchanged Data in the manner described in Schedule "C".
- (b) The Company shall not assume any liability arising out of any packaging, shipment, delivery or transmission of the Exchanged Data in accordance with this Agreement.
- (c) Any carrier of the Exchanged Data shall not be considered an agent of the Company.
- (d) If the Company is prevented, by any cause beyond its reasonable control, from meeting any delivery date specified for the delivery of updated Exchanged Data, such delivery date shall be postponed automatically by a period equal to the duration of such cause.

4.3 Supply of Products by the Province

On the delivery dates and in the manner specified in Schedule "C" the Province will, without cost to the Company, deliver to the Company the most current version of the Products described in Schedule "B".

4.4 Delivery by the Province

The Province shall deliver the products to the Company subject to the following conditions:

- (a) On the dates described in Schedule "C" the Province shall package, ship, deliver or transmit the Products in the manner described in Schedule "C".
- (b) The Province shall not assume any liability arising out of any packaging, shipment, delivery or transmission of the Products in accordance with this Agreement.
- (c) Any carrier of the Products Data shall not be considered an agent of the Province.
- (d) If the Province is prevented, by any cause beyond its reasonable control, from meeting any delivery date specified for the delivery of the Products, such delivery date shall be postponed automatically by a period equal to the duration of such cause.

5. NO WARRANTY

5.1 Use of the Products or Exchanged Data is subject to the following:

- (a) The Products or Exchanged Data are each provided “as is” without warranty or representation of any kind, either expressed or implied, including, but not limited to any implied warranties of merchantability or fitness for a particular purpose.
- (b) Neither party will be liable for any damages, including, without limitation, incidental and consequential damages and damages for lost time, data, profits or revenue, arising out of the use of, or inability to use, the Products or Exchanged Data, even if such party has been advised of the possibility of such damages.
- (c) Neither party shall make any representation or warranty on concerning the Products or the Exchanged Data on behalf of the other party, and responsibility for any such representation or warranty made is hereby disclaimed.
- (d) Except as set out in this Agreement, neither party makes any representation or warranty, expressed or implied, respecting this Agreement.

6. ASSIGNMENT AND TRANSFER

Except as set forth in this Agreement, neither party shall disclose, lease, sell, distribute, make, transfer or assign the Products or Exchanged Data or engage in any transaction which has the effect of transferring the right of use of any part of the Products or Exchanged Data without prior written consent of the other party.

7. MISCELLANEOUS

7.1 Applicable Law (Venue)

This Agreement shall be construed and interpreted under and pursuant to the laws of the Province of British Columbia.

7.2 Invalidity

If any term or provision of this Agreement or the application hereof to any person or circumstance shall to any extent be invalid or unenforceable, and that term or provision is not essential to the purposes of this Agreement such that its severance would frustrate this Agreement, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforced as written to the fullest extent permitted by law.

7.3 Entire Agreement

This Data Exchange Agreement contains the entire agreement between the parties hereto with respect to the matters covered hereby, and no other statement or promise made by any party hereto, which is not contained herein, shall be binding or valid.

7.4 Authority

Each party represents and warrants to the other party that this Agreement is a legal, valid and binding obligation and is enforceable in accordance with its terms and that each party is authorized to enter into this Agreement.

7.5 No Legal Relationship

No partnership, joint venture or agency shall be created between the parties by this Agreement or shall be deemed to be created by this Agreement or by any action of the parties to this Agreement.

7.6 Binding Agreement

This agreement shall be binding upon the Province and its permitted assigns and upon the Company and its successors and permitted assigns.

7.7 Waiver

The waiver of a breach by one party of any provision of this Agreement shall be effective only if it is in writing and signed by the other party, and the giving of such a waiver shall not be deemed to be a waiver of any subsequent breach of the same or any other provision of this Agreement.

7.8 No Amendment

No amendment or modification to this Agreement shall become effective unless the same have been reduced to writing and duly executed by the parties hereto.

The parties have executed this Agreement in the manner and on the dates set out below:

SIGNED on behalf of _____)
)
)
 [print Company name] _____)
 by its authorized signatory _____)
 this ____ day of _____, 2003)
 in the presence of: _____)
)
 _____) **[insert Company name]**
 Signature of Witness _____)
)
 Address of Witness _____) Per: _____)
) [Signature of Authorized Signatory]
)
 _____)
 Occupation of Witness _____) Printed Name of Authorized Signatory

SIGNED on behalf of **HER MAJESTY**)
 THE QUEEN IN RIGHT OF THE)
 PROVINCE OF BRITISH COLUMBIA)
 by a duly authorized representative of the)
 Ministry of Sustainable Resource Management)
 this ____ day of _____, 2003) **Base Mapping and Geomatic Services Branch**
 in the presence of: _____)
)
)
 _____)
 Signature of Witness _____) Signature of a Duly Authorized Representative of
) the Ministry of Sustainable Resource Management
 Address of Witness _____)
)
 _____)
 Occupation of Witness _____) Printed Name of Duly Authorized Representative

SCHEDULE "A"
DATA PRODUCTS

DIGITAL MAPS CONSISTING OF POSITION FILES, REPRESENTATION FILES AND ATTRIBUTE FILES DESCRIBED AS:

PRODUCTS:

The Province will provide the following Products to the Company:

EXCHANGED DATA:

In exchange, the Company will provide the following Exchanged Data to the Province:

Mapsheets for the above Products and Exchanged Data are listed in Schedule "B".

SCHEDULE "B"

MAPSHEET INVENTORY

This agreement applies to the areas covered by the following British Columbia Geographic System (BCGS) maps:

MAPLIST:

List all mapsheets here

FILE TYPE:

List format here

SCHEDULE "C"

**PROVINCE AND COMPANY
DELIVERY DATES**

DELIVERY DATES OF EXCHANGED DATA:

DELIVERY DATES OF PRODUCTS:

MANNER OF DELIVERY OF EXCHANGED DATA:

MANNER OF DELIVERY OF PRODUCTS:

EXCLUSIONS AND EXEMPTIONS: