



# Sample Data Licence Agreement between Airservices Australia and the Customer

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## 1 Background and Term

### 1.1 Background

- (a) Airservices Australia is a body corporate established by the *Air Services Act 1995* (Cth) that provides safe and environmentally sound air traffic control management services, navigation services, and aviation rescue and fire fighting services to the aviation industry both within and outside Australian territory.
- (b) Airservices Australia also produces, compiles and publishes aeronautical information and data.
- (c) Airservices Australia has produced the Sample Data to enable the evaluation of aeronautical information and data produced by Airservices Australia prior to purchase.
- (d) Copyright subsists in the Sample Data sets as discrete compilations and in the various individual works which comprise those Sample Data sets, and Airservices Australia owns that copyright.
- (e) The Customer has requested access to the Sample Data.
- (f) Airservices Australia agrees to permit the Customer to access the Sample Data, and to grant the Customer a non-exclusive licence to Use the Intellectual Property Rights subsisting in the Sample Data, on the terms and conditions of this agreement.

### 1.2 Term

This agreement starts on the Commencement Date and continues until it is terminated in accordance with clause 15.

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## 2 Acceptance

### 2.1 Means of acceptance

- (a) This agreement is available for acceptance by a person who seeks to access Sample Data.
- (b) By You indicating agreement to or acceptance of this agreement through the Data Portal or otherwise:
  - (i) You accept the terms of this agreement on behalf of Yourself and on behalf of the Customer;
  - (ii) You and the Customer are bound to the terms of this agreement; and

- (iii) You warrant that You have due authority to bind the Customer to this agreement.
- (c) You and the Customer acknowledge and agree that any act of accessing, downloading or Using the Sample 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 or Using the Sample Data are duly authorised to bind the Customer to this agreement.

## **2.2 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) The Customer must ensure that its Personnel comply with the terms of this agreement.

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# **3 Supply of Sample Data**

## **3.1 Access to Sample Data**

- (a) Airservices Australia will supply the Customer with access to the Sample Data through the Data Portal (or any other means agreed by Airservices Australia), and with a licence to Use the Sample Data on the terms of this agreement.
- (b) Airservices Australia is not required by reason of this agreement to make the Sample Data or any other aeronautical data or information available for evaluation or any other purpose.

## **3.2 Updates**

Airservices Australia may update the Sample Data, or withdraw the Sample Data from availability, at any time and for any reason without any prior notice to the Customer.

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# **4 Customer Obligations**

## **4.1 Customer responsibilities generally**

The Customer acknowledges clauses 8 and 9, and agrees that it is at all times solely responsible, and Airservices Australia is not responsible, for:

- (a) selection and consideration of the Sample Data, including for any particular purpose, to achieve any intended results, or with a view to evaluating the suitability of, or purchasing, aeronautical information and data from Airservices Australia;
- (b) accessing and downloading the Sample Data, including any updates;
- (c) its Use of, or inability to Use, the Sample Data;
- (d) the interpretation of any results obtained or conclusions drawn from Use of the Sample Data, and the Customer must exercise all appropriate precautions before placing reliance on those results or conclusions; and
- (e) any decision by the Customer to purchase aeronautical information and data from Airservices Australia, including regarding the type and quantity of aeronautical information and data purchased.

## 4.2 Air safety

The Customer acknowledges that:

- (a) the accuracy and integrity of aeronautical information and data is essential for safe air navigation and air safety generally; and
- (b) the Sample Data is not kept up to date, and is not suitable for any air navigational or operational use,
- (c) and agrees that it:
- (d) will not Use the Sample Data for any commercial, air navigational or operational purpose;
- (e) will inform all of its Personnel that the Sample Data is not suitable for commercial, air navigational or operational use;
- (f) will not do or omit to do, or cause or authorise the doing or omission of, anything in connection with the Sample Data which may adversely affect or jeopardise in any way, safe air navigation or air safety generally;
- (g) will immediately report to Airservices Australia anything done or omitted to be done, or caused or authorised by the Customer, in connection with the Sample Data which may adversely affect or jeopardise, in any way, safe air navigation or air safety generally; and
- (h) will 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 of the Sample Data.

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# 5 Intellectual Property Rights

## 5.1 Grant of licence

- (a) Airservices Australia grants to the Customer a personal, non-exclusive, non-transferable, world-wide, revocable licence to Use the Sample Data (and any incorporated third party Material) for the Permitted Purpose for the duration of the Term.
- (b) The Customer acknowledges and agrees that:
  - (i) the licence to Use the Sample Data granted in clause 5.1(a) does not include:
    - (A) the right to Enhance or Commercialise the Sample Data; or
    - (B) the right to sublicense the Sample Data; and
  - (ii) Airservices Australia may itself grant further licences to any person in relation to the Sample Data for any purpose.

## 5.2 Licence restrictions

- (a) The Customer must not in any way make use of or deal with the Sample Data except as expressly provided under this agreement.
- (b) The Customer must not do, or cause or authorise the doing of, anything in connection with the Sample Data which may adversely affect or jeopardise Airservices Australia's rights, title and interest (including Intellectual Property Rights), or those of a third party, in the Sample Data.
- (c) The Customer must not remove, obscure or interfere with any copyright notice, trade mark, warning or disclaimer incorporated into the Sample Data,

and will ensure that appropriate warning notices are included with any copies permitted under this agreement.

- (d) The Customer must comply with all reasonable directions, instructions or specifications given by Airservices Australia from time to time about the Use of the Sample Data, where those directions, instructions or specifications are directed to preventing a compromise of safe air navigation or air safety generally. Airservices Australia is not, however, required to give such directions, instructions or specifications.
- (e) The Customer is responsible for ensuring that there is no Unauthorised Use of the Sample Data by any of its Personnel, including through the use of appropriate supervision, control and security measures. If the Customer becomes aware of any Unauthorised Use (whether by its Personnel or by a third party) it must immediately notify Airservices Australia in writing and take steps, including as instructed by Airservices Australia, to prevent further Unauthorised Use.

### **5.3 Moral Rights**

The licence granted in this clause 5 does not include or constitute any Moral Rights consent or waiver. The Customer must ensure that its Use of the Sample Data does not infringe the Moral Rights of any person, except where it obtains a Moral Rights consent from that person that meets the requirements of the *Copyright Act 1968* (Cth).

### **5.4 Ownership of Sample Data and Enhancements**

The Customer acknowledges that the Intellectual Property Rights in the Sample Data remain vested in Airservices Australia.

### **5.5 Third party rights**

Airservices Australia may at any time vary the licence in this clause 5, including to give effect to any conditions or limitations imposed by third parties on third party Material incorporated in, or third party Intellectual Property Rights subsisting in, the Sample Data, by notice to the Customer from time to time.

### **5.6 Reservation of rights**

Airservices Australia reserves all rights in the Sample Data that are not expressly granted in this clause 5.

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## **6 Taxes**

### **6.1 GST**

- (a) No GST is payable in connection with this agreement.
- (b) Notwithstanding clause 6.1(a), if GST is or will be imposed on a supply made under or in connection with this agreement, Airservices Australia may, to the extent that the consideration otherwise provided for that supply under this agreement is not stated to already include an amount in respect of GST on the supply:
  - (i) increase the consideration otherwise provided for that supply under this agreement by the amount of that GST; or
  - (ii) otherwise recover the amount of that GST from the Customer.

- (c) Costs required to be reimbursed or indemnified under this agreement must exclude any amount in respect of GST included in the cost for which an entitlement arises to claim an input tax credit.

## **6.2 Other Taxes**

- (a) All amounts payable, consideration provided or monetary limits in this agreement are exclusive of any Taxes.
- (b) Subject to clause 6.1, all Taxes imposed or levied in connection with the performance of this agreement must be borne by the Customer.

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# **7 Contract management**

## **7.1 Variation**

Airservices Australia may vary the terms of this agreement at any time by notice to the Customer.

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# **8 Warranty and indemnity**

## **8.1 Warranty and indemnity**

- (a) Airservices Australia:
  - (i) warrants that it has the right to grant the licence under clause 5 of this agreement in respect of the Sample Data; and
  - (ii) subject to clauses 8.1(b) and 8.1(c), indemnifies the Customer against liability arising from a final judgment of a court in proceedings brought by a third party alleging that the Customer's Use of the Sample Data infringes the third party's rights.
- (b) To the extent permitted by law, the indemnity in clause 8.1(a)(ii) is the Customer's sole remedy for any third party Claim that the Use of the Sample Data by the Customer infringes its rights, and is conditional on:
  - (i) the Customer notifying Airservices Australia immediately of any alleged, suspected or actual third party Claim (without making any admission to that person);
  - (ii) Airservices Australia having sole conduct of the defence and, if applicable, settlement of any third party Claim;
  - (iii) the Customer giving Airservices Australia (at Airservices Australia's expense) full co-operation in the defence and, if applicable, settlement of any third party Claim; and
  - (iv) the Customer allowing Airservices Australia, at Airservices Australia's option, to either:
    - (A) modify or replace the Sample Data (as the case may be) at Airservices Australia's expense to make it non-infringing; or
    - (B) procure the right for the Customer to continue Using the Sample Data.
- (c) Airservices Australia has no obligation to indemnify the Customer under clause 8.1(a)(ii) if the third party Claim arises out of:
  - the Customer's Use of the Sample Data contrary to this agreement; or

the Customer's failure to use corrections made available by Airservices Australia to avoid infringement.

## **8.2 Limits on warranty**

- (a) To the extent permitted by law, Airservices Australia:
  - (i) does not guarantee that the Sample Data is free from errors;
  - (ii) has not tailored the Sample Data to the Customer's requirements or specifications;
  - (iii) does not warrant the quality, performance or suitability of the Sample Data for any purpose;
  - (iv) does not assume any duties to any interested person, including any fiduciary duty or duty of disclosure;
  - (v) does not represent that the Sample Data will be available via the Data Portal or otherwise at all times or at all; and
  - (vi) is not responsible for:
    - (A) the operation of any computer system, communication system, software or ancillary equipment used to access the Data Portal;
    - (B) 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 Australia's direct control; or
    - (C) any Loss associated with transmission of Harmful Code.
- (b) Accordingly, the Customer:
  - (i) acknowledges that, to the extent permitted by law, the Sample Data provided by Airservices Australia is, subject to clause 8.1(a)(i), provided without warranty of any kind, express or implied, including warranties related to accuracy, reliability, completeness, Intellectual Property Rights, absence of Harmful Code, merchantability or fitness for a particular purpose;
  - (ii) acknowledges its responsibilities under clause 4;
  - (iii) will ensure that its computer system, communication system and software are compatible with those used in the Data Portal;
  - (iv) will scan downloaded Sample Data for Harmful Code prior to Using it; and
  - (v) will enter into a separate commercial arrangement with Airservices Australia should it wish to purchase data.
- (c) The Customer acknowledges that it has not relied on any representation made by Airservices Australia which has not been expressly stated in this agreement.
- (d) In the event that Implied Terms are determined to form part of this agreement, such terms will apply to this agreement, but the Customer's remedy for breach of any such Implied Term will be limited at Airservices Australia's absolute discretion to that specified in clause 9.2(d) or 9.2(e).

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## **9 Limitation of liability**

### **9.1 Exclusion**

- (a) To the extent permitted by law, the Customer acknowledges and agrees that except to the extent specified in clause 8.1, Airservices Australia is not liable for any Loss incurred by the Customer or any third party as a result of Using the Sample Data.
- (b) Without limiting clause 9.1(a), to the extent permitted by law, Airservices Australia excludes all liability to the Customer for indirect, special or consequential Loss arising out of this agreement or in connection with the relationship established by it. This exclusion:
  - (i) applies to all Claims; and
  - (ii) includes 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 indemnity under clause 8.1(a)(ii), Loss resulting from third party Claims.

### **9.2 Limitation**

To the extent permitted by law, Airservices Australia's total liability to the Customer for all Loss:

- (a) arising out of this agreement (including breach of any Implied Term); or
- (b) in connection with the relationship established by this agreement,
- (c) that is not excluded under clause 9.1 is limited for any and all Claims to:
- (d) the replacement or update of the Sample Data to which the breach relates, or the supply of equivalent Sample Data; or
- (e) the payment of the cost of replacing or updating the Sample Data to which the breach relates or of acquiring equivalent Sample Data.

This limitation applies whether or not Airservices Australia's liability is in contract, tort (including negligence), equity, under statute or otherwise.

### **9.3 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.

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## **10 Indemnity by Customer**

### **10.1 Scope of indemnity**

The Customer at all time indemnifies Airservices Australia against all Loss suffered or incurred (or agreed to be paid by way of settlement or compromise) by Airservices Australia, including its Personnel, to the extent that the Loss arose from:

- (a) any act or omission specified in clause 8.1(c);
- (b) the Customer's Use of, or inability to Use, the Sample Data;

- (c) any unlawful, wilfully wrongful or negligent act or omission of the Customer in connection with this agreement;
- (d) the Customer's breach of this agreement, including any Enhancement or Commercialisation; or
- (e) subject to clause 8.1(a)(ii), any Claim by a third party against Airservices Australia or any Airservices Australia Personnel caused in any way specified in clause 10.1(a), clause 10.1(b), clause 10.1(c) or clause 10.1(d), including in relation to:
  - (i) the death or personal injury of any person; or
  - (ii) loss or damage to, or loss of use of, any real or tangible property.

## **10.2 Enforcement of indemnity**

- (a) If either party becomes aware of a matter that may give rise to a Claim under clause 10.1, it must give notice of that fact to the other party as soon as practicable.
- (b) The Customer agrees that Airservices Australia may enforce the indemnity in favour of Airservices Australia Personnel, for the benefit of each of them, as if the Loss had been suffered or incurred (or agreed to be paid by way of settlement or compromise) by Airservices Australia.

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## **11 Audit**

- (a) Airservices Australia or its nominee may audit the Customer's compliance with this agreement, and the Customer agrees to participate cooperatively in such audits.
- (b) Each party will bear its own costs of any audit.
- (c) The Customer agrees at its own cost to take action to implement any recommendations or corrective action identified by the audit and relating to its compliance with this agreement.

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## **12 Privacy**

- (a) In order to facilitate this agreement or access to Sample Data, and to improve or monitor the Data Portal, You and the Customer may provide Personal Information and Airservices Australia may collect a range of information from You or the Customer. Airservices Australia will use that information in accordance with the privacy statement(s) available through Airservices Australia's website.
- (b) Airservices Australia acknowledges that it is bound by the provisions of the *Privacy Act 1988* (Cth).

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## **13 Public statements**

The Customer must not make any public statements, including on the internet or through the media, in relation to the Sample Data without first obtaining Airservices Australia's written consent to the form and content of those statements.



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## **14 Notices**

### **14.1 Requirements**

- (a) Each communication (including each notice, consent, approval, request or demand) under or in connection with this agreement must be in writing and sent or made available in one of the following ways:
  - (i) if given by the Customer, marked for the attention of the Airservices Australia Publications Unit, and either posted to Locked Bag 8500 Canberra ACT 2601, or faxed to +61 2 6268 5111; or
  - (ii) if given by Airservices Australia, posted on Airservices Australia's website or through the Data Portal, or posted or faxed to a postal address or fax number provided by the Customer to Airservices Australia for the purposes of accessing aeronautical information and data.
- (b) The Customer must regularly check the Airservices Australia website for notices.

### **14.2 When received**

A communication that complies with clause 14.1 will be regarded as given and received:

- (a) if posted to an address, on the third Business Day after posting (or on the seventh Business Day after posting, if posted to or from a place outside Australia);
- (b) if faxed, at the time the machine on which it has been sent records that it has been successfully transmitted; or
- (c) if posted on Airservices Australia's website or through the Data Portal, at the time of posting.

### **14.3 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.

### **14.4 Process service**

Any process or other document relating to litigation, administrative or mediation proceedings relating to this agreement may be served by any method contemplated by this clause 14 or in accordance with any applicable law.

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## **15 Termination**

### **15.1 Termination**

Either party may terminate this agreement at any time by notice to the other. Otherwise this agreement and the licence granted under it terminate at the end of the day one year after the Commencement Date.

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## **16 Miscellaneous**

### **16.1 Applicable law**

- (a) This agreement is governed by and is to be construed in accordance with the laws applicable in the Australian Capital Territory.
- (b) Each party irrevocably and unconditionally:
  - (i) submits to the exclusive jurisdiction of the courts of the Australian Capital Territory and its courts of appeal with respect to any proceedings that may be brought at any time relating to this agreement; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inappropriate forum, if that venue falls within clause 16.1(b)(i).

### **16.2 Entire Agreement**

This agreement constitutes the entire agreement of the parties about its subject matter. Any prior agreement, undertakings and negotiations on that subject matter cease to have any effect.

### **16.3 No reliance**

- (a) The only terms, conditions or warranties that apply to the supply of the Sample Data under this agreement are any Implied Terms and 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.
- (b) The Customer acknowledges that, except as expressly stated otherwise in this agreement, in entering into this agreement it has not relied on any representations, warranties, promises or undertakings by Airservices Australia, but has relied on its own knowledge or independent advice.

### **16.4 Exclusion of Vienna Convention**

The United Nations Convention on Contracts for the International Sale of Goods, adopted at Vienna Austria on 10 April 1980, does not apply to this agreement.

### **16.5 Legislative impact**

- (a) Nothing in this agreement will diminish each party's obligations and responsibilities as required by legislation.
- (b) Where there is inconsistency between this agreement and such obligations and responsibilities, legislative obligations and responsibilities will prevail.

### **16.6 Further acts and documents**

Each party will promptly do whatever the other party reasonably requires of it or is reasonably required by law to give effect to this agreement and to perform its obligations under it, including executing and delivering all further documents (in form and content reasonable satisfactory to the other party).

### **16.7 Capacity**

The Customer 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 has the power, authority, capacity and contractual arrangements in place to enter this agreement and to lawfully perform and comply with it fully; and
- (c) all actions necessary for the authorisation of, entry into and performance of this agreement have been duly taken.

#### **16.8 Relationship of parties**

Nothing in this agreement constitutes either party as the employee, agent, partner or joint venturer of the other.

#### **16.9 Transfer**

- (a) Airservices Australia 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 Australia, promptly execute any documents necessary to give effect to this.
- (b) 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 written consent of Airservices Australia. A change in Control is deemed to be an assignment. Any purported dealing in breach of this clause 16.9(b) will be void and a material breach.

#### **16.10 Waiver and exercise of rights**

- (a) 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.
- (b) A single or partial exercise of a right including waiver does not prevent a further exercise of that or of any other right.
- (c) No waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.
- (d) Failure by a party to exercise or delay in exercising a right does not prevent its exercise.
- (e) A party may exercise a right at its absolute discretion, whether separately or concurrently with any other right.

#### **16.11 Consents**

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.

#### **16.12 Rights cumulative**

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.

#### **16.13 Obligation to mitigate**

Each party will do all things reasonably possible to mitigate all Losses arising out of or in connection with any breach or termination of this agreement.

#### **16.14 Indemnities**

A party does not need to incur an expense or make a payment before enforcing a right of indemnity under this agreement.

### 16.15 Severability

- (a) Any provision of this agreement which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability.
- (b) Such illegality, voidness or unenforceability will not invalidate any other provisions of this agreement.

### 16.16 Costs and stamp duty

- (a) Except as otherwise specified in this agreement, each party will bear its own costs and expenses of entering into and performing this agreement.
- (b) The Customer will pay any stamp duty payable in connection with this agreement (including any fines and penalties).

### 16.17 Order of priority

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:

- (a) these terms and conditions; and
- (b) any other document incorporated by reference.

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## 17 Definitions and interpretation

### 17.1 Definitions

In this agreement:

**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 2.1.

**Commercialise** in respect of the Sample Data or any Enhancement to the Sample Data 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 Customer's Personnel) any article embodying the Sample Data or Enhancement or any product or service derived from or incorporating the Sample Data or Enhancement. Commercialise includes Enhancing for a purpose other than for the Customer's internal business purposes.

**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 organisation on whose behalf You acquire the Sample Data or, if there is no such organisation, You.

**Data Portal** means the part(s) of the Airservices Australia website through which the Customer accesses Sample Data.

**Enhancement** means any:

- (a) edit, alteration, modification, adaptation or development of the Sample Data;

- (b) work, product or service created or undertaken by the Customer that is derived from the Sample Data or incorporates any portion of the Sample Data, whether combined with other data or Material or not; and
- (c) machine readable representations of any of the foregoing and any associated Material intended at the time of its creation to be used primarily in conjunction with the Enhancement.

**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, automatic, random expiry dates, trojan horses, spyware or adware.

**Implied Terms** means terms implied by consumer protection legislation into contracts for the supply of certain goods and services that cannot be excluded.

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

**Permitted Purpose** means the purpose of evaluating the Sample Data, and expressly does not include any purpose associated with Enhancement, Commercialisation or operational or air navigational use.

**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.

**Sample Data** means the example data sets available for download through the Data Portal, or otherwise provided by Airservices Australia for test or evaluation purposes.

**Tax** includes:

- (a) 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
- (b) 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 of this agreement as specified in clause 1.2.

**Unauthorised Use** means any:

- (a) Use of the Sample Data otherwise than in accordance with this agreement;
- (b) creation of any Enhancement;
- (c) Commercialisation; or
- (d) other accessing, downloading, copying, reproduction, storage, editing, alteration, modification, adaptation, development, reverse-engineering, decompiling, exploiting, selling, letting for hire, offering by way of trade, offering or exposing for sale or hire, distributing, publishing or communicating to the public, or any other Use, of the Sample 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, use, evaluate, test, copy, print, and store.

**You** means the natural person accessing the Sample Data.

## **17.2 Interpretation**

In this agreement:

- (a) reference to a gender includes any other gender;
- (b) words in the singular include the plural and vice versa;
- (c) 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;
- (d) 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;
- (e) headings are inserted for convenience and do not affect the interpretation of this agreement;
- (f) 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;
- (g) 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
- (h) 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 includes legislation, regulations and other subordinate laws and any modifications or replacements of them, and a reference to “law” includes the above as well as common law;
  - (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;
- (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and
- (ix) this agreement includes all schedules and annexures to it.

### **17.3 Survival**

Clauses 4, 5, 6, 9, 10, 11, 12, 13 and 16 survive the termination or expiry of this agreement.