

# exactEarth Ltd. Data Licence

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## 1. DEFINITIONS

**1.1 “Authorised User(s)”** means employees of End User and those End User contractors who are required to access a Product solely for the purpose of assisting End User to use Product for its internal business use only. End User will be fully liable and responsible for the acts and omissions of its Authorised Users.

**1.2 “Derived Products”** means images (e.g. PNG or JPEG image files), uneditable documents, plots, incident analysis, density plots, risk analysis and other statistics, maps, and related outputs produced by End User and derived from the Product, and not comprising substantially the same information as provided by the Product; Derived Products do not include any electronic format from which the information contained in the Product can be extracted; for the avoidance of doubt, data files that contain Automatic Identification System (“AIS”) messages or the information that forms the basis of AIS messages and other data in a format that can be parsed by software to retrieve the information that forms the basis of AIS messages are not Derived Products.

**1.3 “Documentation”** means any user guides or manuals provided by exactEarth to End User for use with a Product, if any.

**1.4 “exactEarth”** means exactEarth Ltd. and “**exactEarth Affiliate**” means any entity that owns, is owned by or is under common ownership of either a holding company or any of the subsidiaries of exactEarth. exactEarth Affiliates are not deemed to be subcontractors for any term or condition hereunder that relates to the use of subcontractors.

**1.5 “End User”** means the end user of the exactEarth Products and Services.

**1.6 “Product(s)”** means all information (including, without limitation, data, data feeds software, modifications, enhancements, corrections or derivatives thereof and databases), products and/or services provided by exactEarth or an authorised reseller and/or agent of exactEarth to End User. Products also include any web tools or software that are incorporated into CDs or DVDs or that can be used by End User when accessing Products via the Internet and exactEarth website.

**1.7 “Site Licence”** applicable only to certain Products, means that End User has purchased access to Products for a defined entity or single location, and that up to 50 Authorised Users within that entity or location may access the Product at the same time. End User acknowledges that the Site Licence creates additional risk of misuse and abuse, and therefore, agrees to the terms and conditions contained herein.

**1.8 “User Licence”** applicable only to certain Products, means End User has access to the Product limited to the number of Authorised Users specified.

**1.9 “Workgroup Licence”** applicable only to certain Products, means End User has access to the Product limited to a maximum of 5 Authorised Users within a defined workgroup.

## 2. OWNERSHIP

This Licence is an End User Licence and NOT an Agreement of Sale. All rights and uses of Data not expressly granted by this Licence are reserved by exactEarth.

## 3. LICENCE/AUTHORISED USE/INTELLECTUAL PROPERTY RIGHTS

**3.1** exactEarth grants to End User a limited, restricted, non-exclusive, non-transferable, revocable licence allowing End User to use the Products for End User’s stated internal business use only, and to create Derived Products, provided that (a) Derived Products are used for internal business use only and subject to the same restrictions as the Product(s) delivered pursuant to this Licence (except as specifically authorised in advance and in writing by exactEarth); and (b) exactEarth is identified as the source of the relevant data and the Derived Products contain the following copyright notice conspicuously displayed: “Includes material © [year] exactEarth Ltd. All Rights Reserved.” The use of the Products by the End User is further subject to the type of Licence granted (Site, Workgroup, or User Licence).

**3.2** End User may not copy, distribute, republish, transfer, sell, licence, lease, give, permanently retain, decompile, reverse engineer, disseminate, publish, assign (whether directly or indirectly, by operation of law or otherwise), transmit, scan, publish on a network, or otherwise reproduce, disclose or make available to others or create derivative works from (except the creation of Derived Products as permitted herein) the Product or any portion thereof, except as specifically authorised herein. For Products which allow the download of the results of a data search into a data file, an Authorised User may only download such an amount of data which is normal, fair and reasonably necessary for End User’s internal business use and to the extent and in such manner as is within the licence grant. In no event shall an Authorised User download all or substantially all data contained in the Product. If exactEarth, at its sole discretion, believes that the amount of data an Authorised User downloads is not consistent with normal, fair and reasonable necessary use then, notwithstanding its other rights under this Licence, exactEarth is entitled, at its sole option, to charge additional fees for the excessive usage, limit the data usage of the End User, move the End User to a more appropriate licence and/or suspend and in the most extreme cases terminate access to the Product.

**3.3** For certain Products (e.g. an Operational Data Feed) and as specifically authorised in advance and in writing by exactEarth, End User may retain one copy of the data comprising the Product within its own system or database during the term of this Licence. The use of such retained data is subject to the same licence grant and restrictions as the Product(s) delivered pursuant to this Licence.

**3.4** End User must secure all forms of Product files to prevent access by unauthorised individuals or local area network users. Under a Site Licence, End User is not authorised to transmit Products electronically or by any other means in any form to any other agency or entity. End User may make a reasonable number of copies of any Documentation, provided all such copies include all legends, copyright and other proprietary notices that appear on the original.

**3.5** The Product is protected by Canadian copyright laws and international treaty provisions. exactEarth, and exactEarth Affiliates and suppliers as the case may be, shall own and retain all right, title and interest in and to the Product, including all copyrights, patents, trade secret rights, trademarks and other intellectual property rights therein. End User’s possession, installation, or use of the Product does not transfer to End User any title to the intellectual property in the Product, and End User will not acquire any rights to the Product except as expressly set forth in this Licence. End User shall not remove any copyright, trademark or other proprietary notices of exactEarth or any third-party contained on or in Products or other materials delivered to End User, and End User shall reproduce all such notices on all copies

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permitted to be made by End User under this Licence. End User will take any and all actions that may reasonably be required by exactEarth to protect the proprietary rights as owned by exactEarth or third-party providers.

**3.6** exactEarth may use all suggestions, feedback, improvements, report formats or the like that End User provides to exactEarth directly or through or otherwise makes with respect to Products without any obligation.

**3.7** In the event the Products licenced hereunder are provided along with any web tool or software in order to access the Products (“Software”), End User undertakes and agrees to use the Software only for the purpose of accessing the Products and subject to the restrictions as set forth herein. End User may not transfer, sublicense, re-licence or commercially exploit the Software or use such Software for third-party transactions, commercial time-sharing, rental or service bureau use or publicly perform or publicly display the Software. End User must take all reasonable steps to ensure that no unauthorised persons shall have access to the Software. End User must not reverse engineer, disassemble, decompile, create derivative works or otherwise alter or modify the Software. Unless otherwise agreed, End User shall not be entitled to any technical support in relation to the Software.

**3.8** End User represents it is an authorised user and that End User is an individual or entity located in a country that exactEarth is permitted to sell Products to and is not listed and/or sanctioned on the following Government of Canada Sanctions lists. For more information, please refer to: (i) [www.international.gc.ca/world-monde/international\\_relations-relations\\_internationales/sanctions/current-actuelles.aspx?lang=eng](http://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/current-actuelles.aspx?lang=eng) and (ii) <http://www.publicsafety.gc.ca/cnt/ntnl-scrtr/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-eng.aspx>. End User acknowledges and agrees if exactEarth has reason to believe or is made aware of any such condition, exactEarth may exercise its rights to immediately terminate this Data Licence Agreement and/or any associated Agreement.

## **4. CONFIDENTIALITY**

**4.1** Where either Party (“Discloser”) provides the other (“Recipient”) with Confidential Information, directly, or through an authorised reseller, it shall be held in strict confidence and shall not be disclosed or used for any purpose other than as specifically authorised by either Party or as expressly provided in this Licence without the prior written consent of the other. The Parties shall exercise the same degree of care they use to protect their own confidential or proprietary information but no less than a reasonable degree of care.

**4.2** For the purpose of this section, “Confidential Information” means: (a) information related to Products, Documentations, exactEarth methodologies; (b) any Discloser business or technical information, including, without limitation, any information relating to Discloser’s products, services, prices, marketing plans, business process management, analytics technologies, business opportunities, End Users, or personnel; (c) any other information of Discloser that is specifically designated as confidential or proprietary; or (d) any information that by its nature, Recipient knows or should know is confidential or proprietary. Confidential Information shall not include information: (i) which is or becomes public knowledge other than by a breach of this clause, (ii) that is required to be disclosed by any applicable law or by any recognised stock exchange, (iii) obtained from a third-party without breach of an obligation of confidentiality and (iv) information which can be shown to have been independently developed by the parties by means other than through its access to the confidential information or material.

## **5. WARRANTIES AND DISCLAIMERS.**

**5.1** The Product and Documentation is provided “AS IS.” It is acknowledged and understood that neither exactEarth nor any exactEarth Affiliate has made, nor shall be deemed to have made, any representations or warranties whatsoever with respect to the use, content, completeness, availability or accuracy of the Product supplied under this Licence. To the maximum extent permitted by applicable law, exactEarth disclaims all warranties, either express or implied, including but not limited to: (a) implied warranties and conditions of merchantability, fitness for a particular purpose, and non-infringement with respect to the Product and the Documentation; and (b) warranties as to the availability or performance of the Internet and related networks used for the provision and receipt of the Product. End User assumes responsibility for selecting the Product to achieve End User’s intended results, and for the installation of, use of, and results obtained from the Product. Without limiting the foregoing provisions, exactEarth makes no warranty that the Product and/or Documentation will be error-free or free from interruptions or other failures or that the Product will meet End User’s requirements. exactEarth does not assume responsibility for the accuracy of the data sent via AIS and/or any other way or the absence of interruptions of the broadcast by individual vessels.

## **6. INDEMNIFICATION**

**6.1** exactEarth will indemnify, defend and hold harmless End User from and against any third-party claims alleging that Products furnished under and used in accordance with the terms and conditions of this Licence infringe any patent issued as of the Effective Date (“Infringement Claim”). exactEarth will not so indemnify, defend and hold harmless End User to the extent any Infringement Claim would not have arisen but for: (i) any modification of a Product not specifically authorised in writing by exactEarth; (ii) the incorporation of any feature or information provided by or requested by End User into a Product; (iii) the combination of Product with any third-party software, equipment or information not specified in the Documentation; (iv) the use of a version of a Product other than the then-current version, if the infringement would have been avoided by use of the then-current version and exactEarth informed End User of same; (v) End User’s misuse of the Product or failure to protect exactEarth Confidential Information as required herein. In the event Products are held or are believed by exactEarth to infringe, exactEarth may choose, at its sole option and expense, (a) to modify the Products so that they are non-infringing; (b) to replace the Products with non-infringing Products that are functionally equivalent; (c) to obtain a licence for End User to continue to use the Products as provided hereunder; or if none of (a), (b), or (c) is commercially reasonable, then (d) to terminate this Licence for the infringing Products and refund fees paid, prorated from the date of the Infringement Claim. This section 6.1 states the entire liability of exactEarth and End User’s sole and exclusive remedy for any infringement of third-party proprietary rights of any kind.

**6.2** End User will indemnify and hold exactEarth harmless from and against any loss or damage suffered by exactEarth as a result of End User’s (a) use of the Product and (b) breach of the licence grants and restrictions herein.

**6.3 Indemnification Procedure.** The indemnification obligations of each Party under this Section 6 are contingent upon the indemnified Party providing to the Party who has the indemnification obligation: (a) prompt written notice of the alleged claim; (b) sole control of the defence or settlement of the alleged claim; and (c) reasonable cooperation and assistance, at the request and expense of Party to

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indemnify, in the defence or settlement of the alleged claim. If the indemnified Party chooses to be represented by counsel, it shall be at the indemnified Party's sole cost and expense.

**7. LIMITATION OF LIABILITY.** Except for the indemnifications provided by exactEarth in Section 6 above, (i) in no event shall exactEarth be liable for any indirect, incidental, special, consequential, exemplary or punitive damages, lost profits, loss of use or interruption of business arising out of or in connection with this Licence; and (ii) exactEarth's total cumulative liability in connection with this Licence and the Product, whether in contract or tort or otherwise, shall be limited to the combined amount of fees paid and payable by End User pursuant to this Data License Agreement and/or any other agreement.

**8. FORCE MAJEURE.** exactEarth party shall not be liable for non-performance or delays in performance when caused by acts or events which are beyond the reasonable control of exactEarth, including but not limited to the following: acts of God, acts of the public enemy, acts of government (including, without limitation, failure, suspension, modification and/or cancellation of/to grant permits or licences, provided such failure is not the result of any negligence of exactEarth seeking such permits or licences), laws or regulations (including those related to the supply of Products to End User under this Data License that shall be in accordance with all laws or regulations), strikes or other labour disturbances, space debris collisions, solar flares, or any electro-magnetic interferences, hurricanes, earthquakes, fires, floods, epidemics, pandemics, widespread outbreaks, diseases, embargoes, war, riots, explosions, power failures, Internet failures and related network failures ("Force Majeure"). In the event of any such delay, the date of delivery or of performance of the obligation affected by the Force Majeure event shall be extended for a period equal to the effect of time lost by reason of the delay.

**9. TERMINATION.** This Licence and your right to use the Products will automatically terminate if: (a) you fail to comply with any provisions of this Licence; or (b) pursuant to Section 8, in the event of a Force Majeure event. With thirty (30) days of notification of termination you agree to return the Products to exactEarth and certify in writing that all known copies of the Products, including backup and archival copies, have been destroyed. All provisions relating to proprietary rights, use restrictions and transfer prohibitions shall survive the termination of this Licence.

**10. AUDIT.** Upon reasonable notice by exactEarth or an exactEarth authorised reseller to End User, and not more than once annually (unless prior violations have been discovered), exactEarth may audit relevant records at End User's location during normal business hours to enable exactEarth to ensure End User's compliance with this Licence.

## **11. SECURITY MEASURES**

**11.1** exactEarth may impose whatever security measures it reasonably deems appropriate to ensure compliance with this Licence, including covert and overt copy-detection and licence awareness technology and encoding of requestor/user information in printed and electronic formats. Any attempt to circumvent such access restrictions or exactEarth security measures will be considered a material breach of this Licence.

**11.2** For certain Products, exactEarth will issue to End User a password to access the Product, which End User acknowledges is only for End User's and its Authorised Users' use and may not be shared with anyone other than Authorised Users. End User is solely responsible for all use, authorised or unauthorised, of Product (including use by Authorised Users). End User must notify exactEarth immediately of any unauthorised use of Product(s) and/or passwords.

## **12. MISCELLANEOUS.**

**12.1** The Parties may not modify, alter or amend this Licence except by written instrument duly executed by authorised representatives of both Parties.

**12.2** No failure or delay by either Party to exercise any right hereunder at any time operates as a waiver of such right at any future time.

**12.3** End User may assign this Licence to any third-party (whether directly or indirectly, by operation of law or otherwise) only with the prior written consent of exactEarth, which consent will not be unreasonably conditioned, withheld or delayed. Any requested assignment (i) to a direct competitor of exactEarth; (ii) that would interfere with performance of obligations under this Licence; or (iii) that changes the scope of the usage and the intent contemplated by the Parties under this Licence, is deemed unreasonable. Any assignment or transfer in violation of the above is void.

**12.4** This Licence is binding on the Parties, their successors and assigns. exactEarth at its sole discretion reserves the right to subcontract any or all of its obligations under this Licence to subcontractors of its choosing.

**12.5** This Licence will be construed under the laws of the Province of Ontario and the laws of Canada applicable therein, and each Party hereby submits to the exclusive jurisdiction of Ontario Courts. The Parties hereby disclaim the application of the 1980 U.N. Convention on Contracts for the International Sale of Goods. The English language version of this Licence will be controlling in the interpretation or application of the terms of this Licence.

**12.6** If any provision of this Licence is found invalid or unenforceable by an arbitrator or a court of competent jurisdiction, the remaining portions will remain in full force and effect.

**12.7** exactEarth and End User agree that exactEarth may publicise the fact that End User is a user of the Products in a mutually agreed upon initial press release. Thereafter, exactEarth will use End User name only in a list of other exactEarth End Users. Any additional publicity concerning End User will require End User's prior written consent. Any additional publicity concerning exactEarth by End User will require exactEarth's prior written consent.

**12.8** The terms and conditions of this Licence will survive the expiration or other termination to the fullest extent necessary for their enforcement and for the realization of the benefit thereof by the Party in whose favour they operate.

**12.9** No term of this Licence is intended to confer a benefit on or to be enforceable by, any person who is not a Party to this Licence.

**12.10** The following shall be restricted from becoming End Users: those in the US Government, China, Japan, and commodity traders.