



**Hydrographic Office
Marine Department
The Government of the Hong Kong Special Administrative Region**

Licence Agreement for purchasing and using Hong Kong Electronic Navigational Chart

IMPORTANT - READ CAREFULLY - This Licence Agreement is a legal agreement between the Customer and the Government on the purchase and use of the Hong Kong Electronic Navigational Chart. You should not use the Data if you do not accept the terms of this Licence Agreement. Any use of the Data without accepting the terms of this Licence Agreement is considered as unauthorized use of the Data.

DEFINITIONS

1. In this Licence Agreement, unless the context otherwise requires, the following expressions have the following meanings :

"the Customer"	means any individual, body of persons, corporate or unincorporated, who purchased the Data CD-ROM, and it is deemed to have entered into this Licence Agreement with the Government by opening the package containing the CD-ROM;
"Intellectual Property Rights"	means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights of whatever nature and wherever arising, whether now known or hereafter created, and in each case whether registered or unregistered and including applications for the grant of any such rights;
"the Data"	means the Hong Kong Electronic Navigational Chart data produced and owned by the Government and supplied to the Customer under this Licence Agreement;
"the Government"	means the Government of the Hong Kong Special Administrative Region;
"the Government's Representative"	means the Director of Marine or any person duly authorised by him to act for and on his behalf under this Licence Agreement;
"Licence Agreement"	means the non-exclusive non-transferable licence to use the Data in the manner, for such purpose, in the Display System and Device, for the period of twelve (12) calendar months, from the date the Customer purchased and registered the Data with the Hydrographic Office of Marine Department, as set out in this Licence Agreement or as may be renewed by paying the annual subscription fee;
"Display System and Device"	means an Electronic Chart Display and Information System, Electronic Chart System or other system(s) or device(s) on which the Data supplied under this Licence Agreement is being installed, used or displayed;
"the Form"	means the registration form to be filled in and completed by the Customer to enable the Government's Representative to distribute periodical updates to the Data at regular intervals.

2. Each gender includes the others and vice versa.

3. The singular includes the plural and vice versa.

4. The heading to Clauses of this Licence Agreement is for ease of reference only and shall not affect the interpretation or construction of this Licence Agreement.

GENERAL TERMS AND CONDITIONS

1. The Customer warrants and undertakes that the particulars and information provided in the Form are true and accurate.

2. If the Customer does not agree with the terms and conditions of this Licence Agreement, he should not open the package containing the CD-ROM. Instead, the Customer may return the product to the Hydrographic Office of Marine Department, 2/F., Hydro Building, Government Dockyard, Stonecutters Island, Kwai Chung, Hong Kong, for refund.

3. Use of the Data :

3.1 The Customer is allowed to load the Data into the temporary memory of, or to install it into the hard disk of, or the permanent storage device of, a Display System and Device. If the Display System or Device is networked with other Display System and Device, each such Display System and Device must obtain individual licence to use the Data, even though the Customer has no intention to use the Data on a Display System and Device other than the Display System and Device into which the Data was originally loaded or installed.

3.2 The Customer is allowed to make one backup copy of the Data. He can use the backup copy when the original set of Data is lost or otherwise unavailable. Under no circumstances can the original Data and the backup copy be used at the same time.

4. The Customer shall only use the Data during the validity period of this Licence Agreement, which covers a period of twelve (12) calendar months, from the date he purchased and registered the product with the Hydrographic Office, and renewable thereafter for further twelve (12) calendar months, from the date he pay the subsequent annual subscription fee.

5. The Customer shall register with the Hydrographic Office within 30 days of his purchase and then the validity period of the Licence Agreement shall start thereon. Otherwise, the validity period of the Licence Agreement shall be counted from the date of purchase.

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6. The Customer will obtain, at regular intervals, within the validity period of this Licence Agreement, periodical updates to the Data and new editions of the Data from the Government's Representative free of charge. Attention is drawn to the Customer that the issue of a new edition of the Data by the Government's Representative shall automatically render previous editions of the Data outdated. Use of the Data without updating is unsafe for navigation. The Customers agree not to hold the Government any liability whatsoever and howsoever arising including any direct, consequential and indirect loss as a result of his failure to update or install periodical updates.
7. The Customer shall not use the Data in any way whatsoever save as permitted herein. Without prejudice to the generality of the foregoing, the Customer shall not adapt or translate any of the Data or create any derivative works based on the Data.
8. The Customer shall discontinue using the Data after the expiry of this Licence Agreement. He shall immediately cease using the Data and shall permanently erase the Data from the temporary memory of, or the hard disk of, or the permanent storage device of, a Display System and Device, and/or duly destroy the backup copy of the Data.
9. The Government gives no warranty that the Data is error-free and the Government shall in no way be held liable for any loss or damage which may be suffered by the Customer in any use or attempted use of the Data.
10. The Data is produced and encoded in accordance with the Electronic Navigational Chart (ENC) Product Specification, which is set out in the International Hydrographic Organization (IHO) Special Publication S-57 and its annexes, and has been validated in accordance with the Recommended ENC Validation Checks set out in the IHO Special Publication S-58.
11. The Government shall not be responsible to install the Data or provide any training in the use of the Data.
12. All property rights (including but not limited to the Intellectual Property Rights) in the Data are hereby reserved to the Government.
13. Except as expressly provided in this Licence Agreement no warranty, condition, undertaking or term expressed or implied is given or assumed by the Government.
14. Confidentiality :
 - 14.1 The Customer shall not use or divulge or communicate to any person unless otherwise with the prior approval of the Government :
 - (a) any confidential information obtained by it both pursuant to this Licence Agreement and prior to and in contemplation of this Licence Agreement (including but not limited to information concerning the terms of this Licence Agreement) and all other information that it may acquire in the course of this Licence Agreement;
 - (b) any Data;and the Customer shall use its best endeavours to prevent the unauthorized publication or disclosure of any such information or documents.
 - 14.2 The Customer shall ensure that its employees, agents and sub-contractors, if any, are aware of and comply with the confidentiality and non-disclosure provisions contained in this Clause and the Customer shall indemnify the Government against any loss or damage which the Government may sustain or incur as a result of any breach of confidence by any of such persons.
 - 14.3 If the Customer becomes aware of any breach of confidence by any of its employees, agents or sub-contractors it shall promptly notify the Government and give the Government all reasonable assistance in connection with any proceedings which the Government may institute against any such persons.
 - 14.4 The provisions of this Clause shall survive the expiration or termination of this Licence Agreement but the restrictions contained in sub-clause 14.1 shall cease to apply to any information which may come to the public domain otherwise than through unauthorized disclosure by the Customer, its employees, agents or sub-contractors.
15. Waiver :
 - 15.1 No failure by either party to exercise and no delay by either party in exercising any right or remedy available to it under this Licence Agreement or in law or in equity shall operate as a waiver of such right or remedy, nor shall any single or partial exercises of such right or remedy preclude any other or further exercise thereof nor shall any such failure to exercise, or delay in exercising, or single or partial exercise of, any such right or remedy preclude the exercise of any other right or remedy and the rights and remedies of each party herein contained shall be cumulative and not exclusive of any other rights or remedies provided by law or in equity.
16. Amendments and Alternatives :
 - 16.1 No waiver, cancellation, alteration or amendment of or to the provisions of this Licence Agreement shall be valid unless made in writing.
17. Concurrent Remedies :
 - 17.1 No right or remedy conferred upon either party is exclusive of any other right or remedy contained in the Licence Agreement or by law provided or permitted, but each shall be cumulative of every right or remedy given in the Licence Agreement and now or hereafter existing and may be enforced concurrently therewith or from time to time.
18. Severability :
 - 18.1 In the event that any condition or clause of the Licence Agreement not being of a fundamental nature is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Licence Agreement shall not be affected thereby.
19. Entire Contract :
 - 19.1 Each party acknowledges that the terms set out in this Licence Agreement represents the entire agreement between the parties. No other express terms, written or oral, shall be incorporated into the Licence Agreement.