

Victorian Coordinated Imagery and Elevation Program

Guidelines for Access, Pricing, Intellectual Property and Licensing for Imagery and Elevation Products

[Release No. 2]

[Dated: September 2008]

CONTENTS

CONTENTS	2
EXECUTIVE SUMMARY	1
INTRODUCTION	2
PROGRAM PRINCIPLE OBJECTIVES.....	2
PURPOSE.....	2
SCOPE OF THIS DOCUMENT	2
<i>Part A – Access</i>	2
<i>Part B - Pricing</i>	2
<i>Part C – Intellectual Property</i>	3
<i>Part D - Licensing</i>	3
RISK MANAGEMENT	3
PART A – ACCESS	4
BACKGROUND	4
USE OF THE PROGRAM’S IMAGERY AND ELEVATION PRODUCTS	4
DATA ACCESS (PUBLISH / DISCOVERY / DELIVERY).....	4
NON PURCHASE PARTNER ACCESS.....	5
ACCESS AND CHARGING MATRIX FOR THE PROGRAM’S PRODUCTS AND SERVICES	6
PART B – PRICING / ACQUISITION	8
ACQUIRING IMAGERY AND ELEVATION PRODUCTS	8
THE DEPARTMENT OF SUSTAINABILITY & ENVIRONMENT’S (DSE) CONTRIBUTIONS TO THE PROGRAM	8
PRESENT SITUATION.....	9
VICMAP IMAGERY AND ELEVATION	9
PART B.1 – CHARGING AND BUSINESS MODEL OPTIONS	10
CURRENT MODELS TO BE IMPLEMENTED	10
<i>Fee for Service Model</i>	10
<i>Royalty Model</i>	11
FUTURE MODELS FOR CONSIDERATION ON DEMAND	11
<i>Membership Model</i>	11
<i>Credit or Rebate Models</i>	11
PART B.2 - INCOME, FEES AND CHARGES	11
PART C – INTELLECTUAL PROPERTY	13
PRODUCTS THE PROGRAM HOLDS INTELLECTUAL PROPERTY OVER	13
SECURITY	14
PART D – LICENSING	15
OUTLINE.....	15
GENERIC LICENCE AGREEMENT	17
FURTHER REFERENCES	23
GLOSSARY	24
APPENDIX 1 – INTELLECTUAL PROPERTY OWNERSHIP OPTIONS MATRIX	25

EXECUTIVE SUMMARY

The Victorian Coordinated Imagery and Elevation Program's (the Program) mission is to develop an efficient and effective service and cost sharing model for the acquisition of spatial imagery and elevation products for the State of Victoria and the Program Purchase Partners.

These Guidelines aim to outline details on access, charging, storage, intellectual property and licensing arrangements for the products acquired, stored and distributed by the Program.

The Guidelines are for use by existing and potential stakeholders of the Program¹, and have been developed in accord with the Business Model for the Coordinated Imagery Program.

The scope of the document covers access (including storage, viewing and delivery) and rights and licensing to products acquired through the Program. It also makes recommendations for pricing and charging; ownership options for the Intellectual Property for the products acquired by the Program; and licensing arrangements for its Purchase Partners and Stakeholders.

Accessing and Delivery - the Program allows designated users to access existing imagery stored on the Image Web Server (IWS) through the Program or via Data Service Providers (DSPs), Value Added Resellers (VARs) or DSE/SII Direct (CD ROM/DVD etc). Access to products by Purchase Partners and general users comes down to access rights and licensing.

Pricing and Acquisition - the pricing for the use of the Program's Products and Services are set in accordance with the Department of Treasury and Finance (DTF) pricing policy guidelines and the pricing guidelines associated with the Victorian Spatial Information Strategy (VSIS) 2004-07. These Guidelines require all Victorian Government products and services to be priced for full cost recovery, unless there are explicit policy or public-good reasons for not doing so. However, they are not meant to in any way inhibit the use by the Program of issuing licenses which provide generous use provisions to the Program's Purchase Partners.

However, the costs associated with acquisitions are based on negotiations with Suppliers. Those costs are effectively passed through to Purchase Partners.

Business Model Options such as Fee for Service; Royalty; Membership; and Credit or Rebate, as developed in the Program's Business Model, have also been considered, along with income, fees and charges with respect to the Program's Products.

Intellectual Property (IP) - contained in DSE's Imagery and Elevation Program, unless otherwise specified, remains the property of the State of Victoria. This gives DSE the right to fully use the IP allowing it to own, sell, license or bequeath the IP. Having the ability to assign² or license³ those rights allows DSE maximum flexibility in choosing a course of action that will best suit the Program's, and its participants business requirements, particularly when dealing with multi-party Purchase Partners.

By DSE owning full IP rights it can licence organisations wishing to use or sell the data, or to become VARs or DSPs.

Licensing - Purchase Partners and Stakeholders will be provided with licences that set out the terms and conditions that apply to the use of the products acquired and protect the intellectual property that results from the development and maintenance of the spatial information.

The licensing is intended to support the investment that Purchase Partners and Stakeholders have made in the products they have purchased or partnered in, and generous use provisions will be provided to Purchase Partners to enable them to meet their business needs.

¹ To note that the final Paper may have implications for other SII products and data.

² Assignment of rights occurs when the owner sells their IP.

³ Licensing of rights is a fairly common method of exploiting IP. Licensed rights can be exclusive or non-exclusive. They give the licensee the right to use (but not own) the copyright, patent, trade mark or design. The owner of the rights will usually get payments in return for their use. Payment often takes the form of royalties, although in some cases a one-off payment may be more appropriate. The value of these rights is a commercial agreement based largely on the intellectual property of the creation <http://www.ipaustralia.gov.au>

INTRODUCTION

The Victorian Coordinated Imagery and Elevation Program's (the Program) mission is to develop an efficient and effective service and cost sharing model for the acquisition of spatial imagery and elevation products for the State of Victoria and the Program Purchase Partners.

Program Principle Objectives

The Program was not developed to raise revenue, its objectives are to:

- coordinate imagery acquisition across the State of Victoria
- promote sharing/multiple use
- reduce cost
- improve quality
- acquire regular state-wide coverage; and
- meet the requirements of its Purchase Partners.

Purpose

These Guidelines are for use by existing and potential stakeholders of the Program, and have been developed in accord with the Business Model for the Coordinated Imagery Program.

These Guidelines support the requirements of the "*Pricing Framework for Property Information Services*" developed by Land Victoria (2001); the Department of Treasury and Finance's "*Guidelines for Setting Fees and User Charges*"; the Victorian Government's "*Competitive Neutrality Policy (2000)*" and the *Victorian Spatial Information Strategy (VSIS 2004-2007)*.

It is intended that these Guidelines be subject to annual review, and revision or extension as necessary.

Stakeholders would find it useful to read these Guidelines in conjunction with the VSIS Guideline documents located at <http://www.land.vic.gov.au/spatial>.

Scope of this document

This document covers access, pricing, charging, storage, intellectual property and licensing requirements for users of products acquired through the Program.

Part A – Access

Guidelines on access, storage, viewing and delivery of aerial imagery and elevation products via various channels ie

- Image Web Server (IWS) - viewing / storage
- DSE/SII Direct (CD-ROM/DVD etc)
- Value Added Resellers (VARs) and Data Service Providers (DSPs)

Part B - Pricing

Recommendations for pricing and charging of aerial imagery and elevation products and services that may apply based on the stakeholder relationship with the Program ie

- Full cost recovery (according to Government pricing policy guidelines)
- Negotiations with Suppliers and Purchase Partners
- Percentage on any VARs application price
- Charging variations (including Business Model Options)
- Royalties / Income (Credit and Trust Account arrangements)

Part C – Intellectual Property

Options for ownership and confirmation of products over which the Program holds Intellectual Property ie

- Aerial Photography
- Satellite Imagery
- Elevation Products
- Control data

Part D - Licensing

Confirmation of License arrangements for all stakeholders of the Program.

Risk Management

Custodians are required to ensure that distribution and use of imagery and elevation products for which they have custodial responsibility is in accordance with licences, agreements or other appropriate controls that effectively manage the risks associated with the use of the information. Conditions of use are prescribed in Licence Agreements between the user and Spatial Information Infrastructure (SII). Standard conditions may be supplemented with additional special conditions that may be necessary to meet the users' business needs.

In more complex cases specific agreements, contracts, memoranda of understanding or other appropriate controls may need to be developed with conditions that are appropriate for the particular circumstances.

The Program also aims to address potential risks to the future growth of the Program if these issues are not resolved, such as:

Identified Risk	Possible Mitigation Measures	Magnitude
Loss of present Purchase Partners	Licensing arrangements that meet the needs of the varying Purchase Partners. A communication strategy to aid with the ongoing consultation process.	Significant
Not attracting new Purchase Partners	A communication strategy to aid with ongoing promotion of the Program.	Significant
Additional expense of IP added to end products	Continue to work through the Imagery Assurance Group (IAG) to minimise this aspect. Continue to market and communicate across Government Departments to attract more Government Purchase Partners.	Important
Loss of historical imagery for the State	Ongoing consultation with Purchase Partners. Development of storage and access arrangements.	Important
The Program not meeting Purchase Partner expectations	A communication strategy that aims to meet Purchase Partner needs. Provision of better opportunities for feedback, particularly for those in regional areas.	Important
Inability to gain support of Purchase Partners senior management	Development of communication and marketing techniques which includes the support of Purchase Partners.	Important
Not keeping costs down for stakeholders	As part of communications and marketing, encourage planning cycles among local entities to increase Purchase Partners.	Significant
Not continuing to grow industry support	Continue working through the Imagery Assurance Group (IAG) and other Groups. Provision of ongoing feedback opportunities.	Important
Loss of goodwill amongst stakeholders	Better and ongoing communications, marketing, forums and feedback opportunities.	Significant
Access to all imagery, paid for by Purchase Partners, by DSE and DPI officers.	A communications strategy across State Government to encourage their participation in the Program, applying the same pricing process, as equal Purchase Partners. Better promotion of DSE's contributions to the Program.	Significant

PART A – ACCESS

Background

The Guidelines have been developed within the context of the Spatial Information Access Guidelines for Victoria, on the principle that

“If data cannot be accessed it cannot be used. This is not limited to State Government data, but also to that held and managed by Local Government and the private sector.

An access infrastructure should provide a simple, effective means of locating and obtaining spatial information. An effective access infrastructure maximises use.

There are several elements involved in making spatial information ‘accessible’ – metadata (discovery), awareness, access (delivery), pricing and licensing, and privacy.”

Use of the Program’s Imagery and Elevation Products

Unless otherwise specified by the Custodian, the Department of Sustainability and Environment (DSE) and the Department of Primary Industry (DPI) staff are able to use the imagery and elevation products acquired through the Program for the purposes of implementing Departmental programs. However, this does not entitle them to distribute the products to users external to these Departments.

The arrangements for management and sharing of spatial information within DSE and DPI, came into existence following a restructure in 2003 and the subsequent development of “Guidelines for Access and Pricing of Geographic Information” between the Departments. In accordance with the Departments’ strategic priorities, Departmental spatial information will be made generally accessible for use within the Departments, unless indicated otherwise.

However, all stakeholders are required to be familiar with and heed any advice or conditions on the limitations and use of the information that the Custodian publishes in metadata or other documentation. All users should consult the product Custodian to clarify any uncertainty regarding the product and its appropriate use, before considering any wider distribution or use of the imagery.

Data Access (Publish / Discovery / Delivery)

Data can be made available by three basic means – publish, discovery or delivery. The following definitions apply:

- Publish is the way by which the data may be viewed ie via the Image Web Server (IWS).
- Discovery is the creation and maintenance of metadata⁴, or its storage and display in the Victorian Spatial Data Directory, which will also provide for discovery and for assessment of fitness for use.
- Delivery is the transfer (as by hand or shipment) of actual physical data including that delivered by DSE, Data Service Providers (DSPs), Value Added Resellers (VARs) or CD ROM/DVD etc.

The Program allows designated users to view existing imagery stored on the IWS, or have data delivered to them through DSE, DSPs and VARs. Three levels of access are available:

1. Search and discovery – free access to view a list of existing imagery that is available and view samples to understand fitness for purpose (not yet available)
2. Viewing products – users may pay a subscription fee to view available imagery published on the IWS
3. Delivering products – users may pay a licence fee to use existing products for internal use and storage on their computers.

Access to products by Purchase Partners and general users will be according to access rights and licensing.

Vicmap Products are available directly from SII’s network of official Data Service Providers listed at <http://www.land.vic.gov.au/vicmapdsp>

⁴ Metadata is provided whenever data is delivered by the Program

Selected Vicmap products can also be bought online through the Land Channel at <http://www.land.vic.gov.au/vicmapdata>

Non Purchase Partner Access

Not all access to data needs to be via the internet or through automatic applications. Custodians who do not have the capability, capacity, or user demand to provide these types of access for their imagery can still ensure access to their data by publication of metadata through a Data Directory, such as the Victorian Spatial Data Directory (VSDD) and the Victorian Image Directory (VID). While users may not be able to access the data immediately, they know that the data exists and who to contact to access this data.

The DSE Data Service Provider (DSP) and Value Added Reseller (VAR) network is open to non Purchase Partners such as businesses and individuals who require large volumes of data, and/or customised solutions to access information. DSPs and VARs have a selection of datasets. They deliver a range of services, such as customising the area, format and delivery of required information, and providing ongoing support to the customer.

Below is a two page Matrix showing access and charging arrangements for the Program's Products and Services for various Stakeholders.

Access and Charging Matrix for the Program's Products and Services

Customer Types	Project Management & Services	New Imagery Acquisition	Transition Imagery Acquisition (A "Late Purchase Partner Entrant")	Viewing Program Products on-line (IWS)	Storage of Imagery on the Image Web Server (IWS)	Storage and Retrieval of Images from Tape	Supply of Images via Data Service Providers (DSPs) / Value Added Resellers (VARs)
Purchase Partners (PPs)	Nil Fees and Charges	Shared % of total cost of imagery acquisition as worked out between PPs, or where no other PPs; full cost of project.	Either: 1. Renegotiate the acquisition contract with a different mix of PPs and contributions, or 2. Negotiate a fee for acquisition with the new PP that can be credited to the original PPs (in-line with their original contribution) – with the credit going towards future imagery acquisitions.	Nil Fees & Charges for PPs to view imagery they have contributed to acquiring.	Nil Fees & Charges for PPs to store imagery they have contributed to acquiring.	One-off data access fee to manage the storage and retrieval of other images using the Program's storage and retrieval facilities.	Retail prices as set by DSPs. Income from sales goes back into the Program for future acquisition. (as stated on pgs 9 & 11)
Late Entrance Income Purchase Partners ie from PPs who join an imagery acquisition project after the initial PPs have signed the contract, but before the contract is fulfilled.	Nil Fees and Charges	Shared % of total cost of imagery acquisition as worked out between PPs, or where no other PPs full cost of project.	Either: 1. Renegotiate the acquisition contract with a different mix of PPs and contributions, or 2. Negotiate a fee for acquisition with the new PP that can be credited to the original PPs (in-line with their original contribution) – with the credit going towards future imagery acquisitions.	Nil Fees & Charges for PPs to view imagery they have contributed to acquiring	Nil Fees & Charges for PPs to store imagery they have contributed to acquiring.	One-off data access fee to manage the storage and retrieval of other images using the Program's storage and retrieval facilities.	Retail prices as set by DSPs. Income from sales goes back into the Program for future acquisition. (as stated on pgs 9 & 11)
End Users ie not a Partner in Program, eg A Real Estate	N/A	N/A	N/A	<i>Third Party Income</i> from subscription from Program users who want to view the Program's images via the IWS on a frequent basis. Ie Provision of a Corporate Subscription which allows access to the IWS for a defined term, with the income going back towards the Program's imagery acquisition	N/A	One-off data access fee to manage the storage and retrieval of other images using the Program's storage and retrieval facilities.	Retail prices as set by DSPs. Income from sales goes back into the Program for future acquisition. (as stated on pgs 9 & 11)

Access and Charging Matrix for the Program's Products and Services Con'td							
Customer Types	Project Management	New Imagery Acquisition	Transition Imagery Acquisition (A 'late Purchase Partner Entrant')	Viewing Program Products on-line (IWS)	Storage of Imagery on the Image Web Server (IWS)	Storage and Retrieval of Images from Tape	Supply of Images via Data Service Providers (DSPs) / Value Added Resellers (VARs)
Subscribers ie customers that pay a one-off fee to access all imagery, but not a contribution to one particular project	N/A	N/A	N/A	<i>Third Party Income</i> from subscription from the Program users who want to view the Program's images via the IWS on a frequent basis. Ie Provision of a Corporate Subscription which allows access to the IWS for a defined term, with the majority % of the fee going back towards the Program's imagery acquisition.	One-off data access fee to manage the ongoing storage and retrieval of other images using the Program's storage and retrieval facilities.	One-off data access fee to manage the storage and retrieval of other images using the Program's storage and retrieval facilities.	Retail prices as set by DSPs. Income from sales goes back into the Program for future acquisition. (as stated on pgs 9 & 11)
Value Added Resellers (VARs)	N/A	N/A	N/A	VARs Licence Fee	Negotiate if required	Negotiate if required	VARs will have the right to incorporate Vicmap Imagery products in their products or services by entering into a VARs agreement with SII, which will generally include an annual data access fee and royalties on products and services and fees and charges.
Data Service Providers (DSPs)	N/A	N/A	N/A	DPSs Fee and Licence	Negotiate if required	Negotiate if required	Existing DSE Vicmap DSPs will have the right to on-sell all Vicmap Imagery products under the terms and conditions as conditions of their existing agreements.
Suppliers/Owners of Historical Imagery	N/A	N/A	N/A	Nil Fees & Charges for storage of imagery they have made available.	One-off data access fee to manage the ongoing storage of their images using the Program's storage facilities.	One-off data access fee to manage the storage and retrieval of other images using the Program's storage and retrieval facilities.	Retail prices as set by DSPs. Income from sales goes back into the Program for future acquisition. (as stated on pgs 9 & 11)

PART B – PRICING / ACQUISITION

The principles on which pricing of Spatial Information in Victoria have been based are:

- *Prices should not be an impediment to use.*
- *Income obtained from distributing spatial information should be used to maintain and develop it to the standard required by users.*⁵

These principles require a balance to be struck between setting prices to ensure that price is not an impediment, while maintaining income at a level sufficient for maintenance and development of spatial data.

Under the Victorian Spatial Information Strategy 2004-2007 (VSIS) and the forthcoming Spatial Information Management Framework (SIMF), “Pricing of Victorian Government spatial datasets will be based on cost recovery, except where specifically exempted by the Department of Treasury and Finance, or where explicit policy or public good reasons are documented, or where a price is set down in statutes or regulations. However, these policies allow for flexibility and negotiations between the Program and its stakeholders and do not inhibit variations on individual licenses allowing the Program’s Purchase Partners to be able to meet their business needs.

Pricing and licensing strategies are designed to encourage the use of spatial information, while ensuring sufficient income to support maintenance of the data and to protect Intellectual Property.”

The overall basis for setting prices and licensing conditions is the need to maintain data as well as protect copyright and intellectual property (the investment in the data).

Program products and services to non Purchase Partners, including Government Departments (except DSE and DPI), will be priced and charged in accordance with the Victorian Guidelines.

Acquiring Imagery and Elevation Products

In terms of acquiring imagery and elevation products, the Program aims to:

- Create an equitable and transparent acquisition process.
- Support transparent multi-party agreements that allow Purchase Partners to be clear about value for money and the allocation of their funds.
- Compensate or reward Purchase Partners who drive the planned or initial acquisition – but do not present barriers to the introduction of new Purchase Partners. This is to encourage the return of Purchase Partners and reinforce equity in the Program’s service delivery.

The Department of Sustainability & Environment’s (DSE) Contributions to the Program

DSE contributes to the Program as a Purchase Partner, on a case by case basis, and further benefits the Program by providing ongoing in-kind contributions, which include:

- Provision of Aerial Photography/DEM advice to partners.
- Assisting partners with the design of appropriate project specifications.
- Bringing potential purchase partners together via road shows and correspondence.
- Designing efficient photography projects taking into account areas of overlap of past and concurrent photography projects.
- Drafting projects for quotation and negotiating with suppliers.
- Rigorous and probity-checked tender and evaluation processes.
- Project and contract management.
- Quality assurance of data, including spatial accuracy test.

⁵ Source: Spatial Information Pricing and Licensing Guidelines www.land.vic.gov.au/spatial

- Review and validation of deliverables specified in contracts.
- Storage and archiving of imagery products.
- Maintenance of the Image Web Server (IWS).
- Customisation for individual needs where applicable; and
- Management of intellectual property.

Present Situation

The pricing for the use of the Program's imagery and elevation products is set in accordance with the Department of Treasury and Finance (DTF) pricing guidelines and the Spatial Information Pricing and Licensing Guidelines published under VSIS and the forthcoming SIMF. These Guidelines require all Victorian government products and services to be priced for full cost recovery, unless there are explicit policy or public-good reasons for not doing so, and as noted above, they are not meant to in any way inhibit the individualisation of generous license uses for the Program's Purchase Partners.

The costs associated with acquisitions are based on negotiations with suppliers. Those costs are effectively passed through to Purchase Partners.

Ideally, the costs of acquisitions should be split equitably amongst participating Purchase Partners. However, the principles for this cost sharing may vary in each instance and costs may not necessarily be equally shared.

For example this may happen in cases where:

- one or more Purchase Partners requires only a subset of the imagery captured
- the parties involved have different imagery resolution requirements
- Purchase Partners have different capacities to pay for the acquisition
- DSE may not at all times be a financial contributor to all projects, however maintains its ongoing in-kind contributions as outlined above.

The Program facilitates the negotiation process between Purchase Partners to ensure an agreed outcome is achieved. The acquisition may proceed subject to all parties agreeing to the terms presented.

Should a late entrant emerge after the contract has been signed but before it is fulfilled, the Program has the flexibility to either:

- renegotiate the mix of Purchase Partners if practical; or
- provide a credit to the original Purchase Partners for future acquisition activity. (The amount and the basis for the allocation of that credit may vary. It involves a negotiation process and will generally be aligned to the cost sharing principles agreed as part of the original acquisition.)

Having this flexibility enables the Program to promote forward planning to increase the proportion of planned over ad-hoc acquisition activity.

Vicmap Imagery and Elevation

Most imagery and elevation products acquired through the Program add to the overall improvement and continued growth of Victoria's imagery holdings as the imagery will become part of Vicmap Imagery and Elevation⁶, which are the authoritative spatial data for the State of Victoria, and will be used for many applications.

- All income gained from sales of the Program's products will be reinvested in further acquisition in subsequent years. Spatial Information Infrastructure (SII) will not retain any of the Program's income for any other purpose.
- SII will determine royalty levels in consultation with industry. The market will determine retail pricing.
- Existing Vicmap Data Service Providers (DSPs) will have the right to on-sell all of the Program's products under the terms and conditions of their existing agreements.

⁶ For information on Vicmap see <http://services.land.vic.gov.au/landchannel/content/productCatalogue>

Victorian Coordinated Imagery and Elevation Program

- Additional DSPs will be allowed, with the right to on-sell all of the Program's products under the same agreement, terms and conditions as existing DSPs.
- Direct re-sales of the Program's imagery by DSPs will be on the basis of a single one-off payment by the end user (ie, not a recurrent annual fee). The royalty return to the Program for reinvestment will be a minimum price per square kilometre, or a percentage of the GST inclusive invoice price, whichever is the greater.
- Value Added Resellers (VARs) will have the right to incorporate the Program's products into their products or services by entering into a VAR agreement with SII, which will usually include an annual data access fee and royalties. Additional Vicmap Products may also be available for an additional annual access fee.
- Where the Program's product constitutes a major component of the product or service, the royalty payable will be a percentage of the GST-inclusive invoiced price of the value added product or service. A lower royalty percentage may be negotiated for products or services where the Program product is a lesser component of the product or service. Existing royalty arrangements for similar VAR products and services will also be taken into consideration to ensure equitable access.
- The DSE Image Web Server (IWS) is an online means to display and view information/products. Purchase Partners and Stakeholders can view selected imagery at no cost. The IWS is one of SII's contributions to the Program.
- Other means of delivery of data include CD-ROMs/DVD, portable hard disks, etc. Data delivery to Purchase Partners and Stakeholders is another of SII's contributions to the Program.

PART B.1 – Charging and Business Model Options

Under the Program Business Model any of the arrangements described below may be adopted as requirements dictate. Following discussions with Purchase Partners and other Stakeholders to assess their individual business needs, the Program provides the flexibility for Purchase Partners to change Business Models to suit each project's unique requirement.

Current Models to be Implemented

Fee for Service Model

The fee for service model is the most simple and straightforward option. Users request and pay for products on an 'as required' basis.

The model ties income directly with costs, hence is particularly suitable when the nature and demand for products and services is unpredictable, such as ad-hoc acquisitions. The key factors that may influence the price of the Program's products and services include:

- Coverage area
- Quality
- Number of Purchase Partners involved in the acquisition
- Additional services required (e.g. data access facilities)

The key advantages of the fee for service model are that it:

- Allows some flexibility in re-pricing products and services when supply-side costs change e.g. supplier prices – these are costs that the Program has little control of;
- Is simplest to administer when it comes to major acquisition activities.

Royalty Model

The premise of this model is that the Program does not deal directly with end users. Instead, it provides access to its products to a number of resellers, who then on-sell it to end users for a fee. The Program receives royalties from resellers based on the products and services provided.

The key advantage of this model is that the Program can streamline its operations by passing on most of the marketing and consulting functions to resellers. The model capitalizes on resellers' existing networks and relationships with organizations that require products and services.

The challenge of implementing a royalty model is that the Program needs to find a cost effective way to build its product collection. The Program may do this by acquiring the information itself and/or collecting it from a variety of existing sources including its resellers.

For this model to work, the intellectual property needs to remain with the Program.

Future Models for Consideration on Demand

Membership Model

The membership model allows users to use the Program's products and services for a specific period of time by paying a periodic subscription fee. The value of this model is that products and services can be standardised, making them simple and easy to understand.

Credit or Rebate Models

A credit or rebate model rewards those Purchase Partners who commit early to acquisition projects. Should additional Purchase Partners subsequently request to join a specific acquisition project – before that acquisition contract is fulfilled – the Program can either:

- If possible, renegotiate the acquisition contract with a different mix of Purchase Partners and contributions, or
- Negotiate a fee for acquisition with the new Purchase Partner that can be credited to the original Purchase Partners (in line with their original contribution) – with the credit going toward future imagery acquisition.

The key advantage of this business arrangement is that it allows the Program to equitably support Purchase Partners who commit early to planned acquisition projects and still encourage new Purchase Partners to join the Program.

PART B.2 - Income, Fees and Charges

The Program will generate income from the following sources:

- *Fees for acquisition of new products.* These fees are associated with the costs of acquisition based on negotiations with suppliers. Those costs are effectively passed through to Purchase Partners and will be either:
 - a. Planned acquisitions where costs may be shared by Purchase Partners, or
 - b. Ad-hoc acquisitions which, by their unplanned nature, may be more difficult to share amongst Purchase Partners.

Acquisition fees are placed in a designated trust account and can be held in the account across financial years.

It is expected that the ratio of planned to ad-hoc acquisitions will increase as the Program continues to grow and attract more Purchase Partners.

Victorian Coordinated Imagery and Elevation Program

- *One-off data access fee* to manage the storage and retrieval of acquired images for Purchase Partners – using the Program’s storage and retrieval facilities. This is an optional service (and therefore incurs an expense) for Purchase Partners, as some may elect to retain acquired products in their own databases.
- *Late entrance income* will come from Purchase Partners who join an acquisition project after the initial Purchase Partners have signed the contract, but before the contract is fulfilled. The initial Purchase Partners will be given the option to reduce their contribution by a proportional amount based on the number and contribution of Purchase Partners. Where practical, the initial Purchase Partners may also opt to carry over the reduced contribution to the following financial year as a credit, for purchase of additional imagery.
- *Third party income* from:
 - Subscriptions from Program users who want to view Program images via the IWS on a frequent basis. (Details regarding the amount and terms for this subscription need to be confirmed in consultation with Purchase Partners.)
 - Royalties paid by DSPs and VARs to access existing imagery.

Data access fee

- The one-off optional data access fee is calculated based on a percentage of the acquisition cost.

Credits

- Late entrance income is transferred to the Program’s trust account at the end of each financial year.
- All credits are spent in the following financial year on imagery acquisition.

PART C – INTELLECTUAL PROPERTY

Due to the complexity and limitations of shared Intellectual Property (IP) ownership (See Appendix 1 for an outline of ownership options), all intellectual property (IP) contained in DSE's Imagery and Elevation Program, unless otherwise specified, is the property of the State of Victoria. This gives DSE the right to fully use the IP, on behalf of Government, allowing it to own, sell, license or bequeath the IP. Having the ability to assign or license those rights allows the Government maximum flexibility in choosing a course of action that will best suit the Program's and its participants' business requirements, particularly when dealing with multi-party Purchase Partners.

This intellectual property is mainly in the form of copyright material and confidential information. It is a valuable asset that is protected by intellectual property laws. It has the potential to be used or licensed to obtain income that can be directed towards the maintenance and further development of the Program's information. Many of the provisions of the Spatial Information Pricing and Licensing Guidelines and the Spatial Information Access Guidelines are designed to assist with the protection of the intellectual property asset.

SII/DSE (on behalf of Government) retains full IP rights, as with all Vicmap Products, and licenses organisations wishing to use or sell the data (as in the case of existing arrangements with Value Added Resellers (VARs) or Data Service Providers (DSPs) for Vicmap datasets).

Under the Program DSE will receive the royalties from the products sold by VARs and DSPs and use these funds to support subsequent imagery acquisition (as outlined on pages 6, 7, 9 & 11).

The State's holding of the IP enables it to:

- make the data accessible to a wider number of users and allow it to gain royalties to reinvest into the Program;
- facilitate the creation of value-added products and services which could also see better returns to Purchase Partners for future acquisitions;
- avoid confusion and complications over multi-Purchase Partner projects;
- indemnify Purchase Partners from errors and risk management insurance;
- simplify arrangements in data sharing and allow products to be utilised for future comparative analysis on Victoria's change/growth over time.
- allow for the capture, viewing and storage of spatial imagery and elevation products through the Image Web Server (IWS).

Products the Program Holds Intellectual Property Over

All information created as a result of the supply of goods or the provision of services through the Program is owned by the State and allocated to an authorised Custodian who implements their custodial responsibilities in accordance with VSIS custodianship guidelines, which take into account the needs of data users. Access is managed through agreement with the imagery custodian and does not mean all State Government Departments are automatically entitled to the product. This includes, but is not limited to, the following products:

- Aerial Photography
 - Orthorectified tiles and mosaics
 - Raw Frames
 - Film negatives
 - Orientation parameters (internal and external)
- Satellite Imagery

Victorian Coordinated Imagery and Elevation Program

- Elevation Products
 - LiDAR data points
 - Contours
 - Spot Heights
 - Breaklines
- Control Data
 - Survey data collected for the purpose of georeferencing and or validating aerial photography and elevation data.

Security

Departmental staff shall ensure that the Program's products and information are protected at all times from access, use or misuse, damage or destruction by any person not authorised by the relevant Custodial Division.

The IWS includes a security module which gives custodians the ability to control who has access to their imagery (published on the IWS).

PART D – LICENSING

Outline

Spatial Information is a valuable asset and the value of this asset resides in its intellectual property (IP), mainly in the form of copyright material and confidential information, and is protected by intellectual property laws. It has the potential to be used or licensed to obtain income that can be directed towards the maintenance and further development of the spatial information. Many of the provisions of the Spatial Information Pricing and Licensing Guidelines are designed to assist with the protection of the intellectual property asset.

Custodians of spatial information should ensure that its distribution and use is in accordance with licences, agreements or other appropriate mechanisms that effectively manage the risks associated with the use of the information. The State, being the custodian of the Program's spatial information, maintains intellectual property rights over the Program's information.

The organisation acting as a data custodian will be responsible for maintaining copyright provisions and ensuring that use of the information does not infringe any privacy or confidentiality requirements. For further information on the responsibilities of custodians see Spatial Information Custodianship Guidelines at www.land.vic.gov.au/spatial/

Under the Spatial Information Pricing and Licensing Guidelines for Victoria, specific outcomes for licensing include:

- *use of licences or other such agreements to clearly set out the terms and conditions that apply to the use of the spatial information; and*
- *whilst there are a limited number of ownership models, there are innumerable ways in which a licence can be dimensioned.*

These licences set out the terms and conditions that apply to use of Spatial Information and protect the intellectual property that results from its development and maintenance.

Under the Program licensing is intended to support the investment that Purchase Partners and Stakeholders have made in the products they have purchased or partnered in.

As stated earlier, the prime purpose of the Program is to facilitate an efficient and effective service and cost sharing model for the acquisition of spatial imagery and elevation products, including on-selling, for the State of Victoria and Purchase Partners; it is not a revenue raising Program. To that end the Program will make provision for Purchase Partners to be licensed under terms that ensure generous use provisions to meet their business requirements, including provision of products to Contractors/Consultants, on-selling or sub-licensing and publishing. The Program can provide Purchase Partners with documentation to assist in dealings with their stakeholders if required.

In the event that it is deemed desirable for a Purchase Partner to contribute imagery to the Program (e.g. historical imagery) as part of their 'contribution', this imagery should be licensed to the State of Victoria under terms that would enable the imagery to be distributed and licensed under standard Program licenses.

A licensing arrangement supports a number of objectives:

- managing the use of intellectual property;
- clearly setting out supplier and user responsibilities in addressing liability issues;
- developing flexible strategies to promote client loyalty and confidence in on-going supply of information;
- projecting marketing characteristics and income to ensure adequate funding for maintenance; and
- complying with competitive neutrality guidelines.

Two types of licences are generally available:

- Internal use only (non-commercial).
- Commercial use involving on-selling licensed data or information, or using licensed data in a commercial product (this may involve the return of royalties to the custodian).

A commercial use licence will apply to those value-added products and services that effectively on-sell the original data in a modified form, whether they include all or only part of the original data.

An example of a Spatial Information Licence Agreement (a data access agreement) is shown on the following pages and can be viewed in the Spatial Information Licensing and Pricing Guidelines at www.land.vic.gov.au/spatial/spatial.

Generic Licence Agreement

No Signature – With Consideration

DATA ACCESS LICENCE AGREEMENT

WARNING: PERMISSION TO USE THE LICENSED MATERIAL THAT ACCOMPANIES THIS AGREEMENT IS CONDITIONAL UPON YOU, THE CUSTOMER (LICENSEE) ACCEPTING THE TERMS SET OUT BELOW.

1. Definitions

In this Agreement the following terms shall have the meanings set out below, unless the context requires otherwise.

“**Agreement**” means this Licence Agreement and includes the Schedule and any annexures or documents incorporated by reference;

“**Code of Practice**” means a code of practice as defined in, and approved under, the *Information Privacy Act 2000 (Vic)*;

“**Commencement Date**” is the date specified in the Schedule;

“**Commercialise**” or a derivation of that word in respect of the Licensed Material or a product or service derived from the Licensed Material, includes distributing, giving away, selling, letting for hire, or by way of trade, offering or exposing for sale or hire any article embodying the Licensed Material or any product or service derived from or incorporating the Licensed Material;

“**Enhancement**” or a derivation of that word, in relation to the Licensed Material, includes any modification, adaptation or redevelopment of the Licensed Material, any work derived from the Licensed Material, 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 Licensed Material;

“**Fee**” is the fee or fees specified in the Schedule payable by the Licensee to the Licensor (or the Licensor’s Agent) for the use of the Licensed Material;

“**Further Term**” means such further term of this Licence as granted from time to time (for whatever period) by the Licensor on payment of the Renewal Fee;

“**GST**” means any tax imposed under the GST Law and includes GST within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)* as amended from time to time;

“**Information Privacy Principles**” means the Information Privacy Principles set out in the *Information Privacy Act 2000 (Vic)*;

“**Licence**” is the Licence granted pursuant to this Agreement by the Licensor to the Licensee for the use of the Licensed Material;

“**Licensed Material**” means the material so described in the Schedule the subject of this Agreement and any Enhancement thereto;

“**Licensee**” is the party specified as such in the Schedule;

“**Licensor**” means the State of Victoria;

“**Permitted Number of Computers**” means the number of computers, as set out in the Schedule, that are permitted to store or have access to the Licensed Material;

“**Renewal Fee**” means the fee payable to the Licensor for the grant of a Further Term of the Licence, which fee may be reviewed by the Licensor at any time and varied with respect to each such Further Term as the Licensor considers appropriate;

“**Third Party Licensed Material**” means material (if any) so described in the Schedule which is owned by a third party and is incorporated in the Licensed Material or accompanies the Licensed Material; and

“**Term**” means the term of this Licence as specified in the Schedule.

2. Scope of Agreement

- 2.1 Subject to the terms and conditions of this Agreement, the Licensor grants to the Licensee a non-transferable and non-exclusive licence to use the Licensed Material for the purposes set out in the Schedule.

3. Acceptance

- 3.1 The Licensee accepts or is deemed to have accepted the terms of the Licence upon:
- (a) when delivery of the Licensed Material is by CD or other physical form of delivery and a Licence has not previously been signed in respect of that Licensed Material -; upon opening the sealed package containing the Licensed Material;
 - (b) when delivery of the Licensed Material is by email -; upon dispatching an email addressed to the Licensor agreeing to the terms of the Licence;
 - (c) when delivery of the Licensed Material is by the Internet -; upon acknowledgment of your acceptance of the terms of the licence by pressing the agreement button on the screen;

Victorian Coordinated Imagery and Elevation Program

(d) if delivery of the Licensed Material is by a method other than those referred to in (a), (b) or (c) of this sub-clause 3; upon signing this Licence.

4. Duration of Licence

- 4.1 Subject to the Licensor granting the Licensee a Further Term, this Agreement commences on the Commencement Date and will continue for the Term.
- 4.2 The Licensor may offer the Licensee a Further Term by notifying the Licensee in writing of such offer and of the Renewal Fee payable with respect to such Further Term and the date by which the Renewal Fee must be paid. If, prior to or upon expiration of the Term, the Licensor offers in writing to renew the Licence for a Further Term under this sub-clause 4.2, the Licence shall, subject to the payment of the Renewal Fee by the date set for that Further Term, continue for the period of such Further Term. The Licence renewed under this clause shall be on the same terms and conditions as set out in this Agreement, subject to any variations agreed to in writing by the Licensor and save that the Renewal Fee for any Further Term of the Licence may be varied by the Licensor.
- 4.3 If, upon expiration of the Term (or Further Term) of the Licence, the Licensee does not renew the Licence for a Further Term, then the Licensee or its representative shall destroy any remaining copies of the Licensed Material and any information or other documentation associated with it or otherwise return or dispose of such Licensed Material and information in the manner directed by the Licensor.

5. Permitted Number of Computers and Audit

- 5.1 This Licence entitles the Licensee to load one copy of the Licensed Material onto a hard disk or other storage device of up to the Permitted Number of Computers set out in the Schedule.
- 5.2 The Licensee may load one copy of the Licensed Material on a single file server for the purposes of:
 - (a) downloading the Licensed Material onto a hard disk or other storage device of up to the Permitted Number of Computers that are on the same network as the file server; and/or
 - (b) providing access to the Licensed Material to network computers or terminals (being computers with no hard disk or other storage device) up to the Permitted Number of Computers that are on the same network as the file server.No other network use is permitted.
- 5.3 Any calculation of the Permitted Number of Computers shall include all computers of the Licensee that store or have access to the Licensed Material, whether pursuant to sub-clause 5.1, 5.2 (a) or 5.2 (b).
- 5.4 The Licensor shall, upon reasonable notice being given by the Licensor, be permitted to attend at the Licensee's premises at any time during normal business hours and conduct such tests on the Licensee's computer equipment as is necessary to verify the number of computers on which the Licensed Material is, or has been, displayed or used. The Licensor shall keep confidential any information of the Licensee which comes to the Licensor's attention whilst carrying out such tests other than information concerning the use and display of the Licensed Material.

6. Licence Conditions

- 6.1 The Licensor warrants it has the right and authority to grant the Licence to the Licensee.
- 6.2 Except as provided for in this Agreement and subject to sub-clause 6.3 the Licensee shall not copy or reproduce the Licensed Material without the Licensor's prior written consent.
- 6.3 The Licensee shall keep the Licensed Material confidential and shall not Commercialise or otherwise disclose the Licensed Material or any product or service derived from the Licensed Material to any third party unless specifically provided by this Agreement. The Licensee may make Enhancements to the Licensed Material for the purposes set out in the Schedule but may not Commercialise or otherwise disclose the Licensed Material so Enhanced or the Enhancements to any third party other than in accordance with sub-clause 6.6.
- 6.4 The Licensee may make copies of the Licensed Material for the purpose of back-up and security only. The Licensee shall at all times acknowledge such copies as the property of the Licensor. The terms of this Agreement apply to the said copies.
- 6.5 The Licensee may only use the Licensed Material for the purposes set out in the Schedule.
- 6.6 The Licensee may permit its consultants, contractors or sub-contractors (in this Agreement referred to as "Consultants") to use the Licensed Material for the purposes described in sub-clause 6.5, provided that the Licensee takes all necessary steps and imposes the necessary conditions to ensure that the Consultants using the Licensed Material keep the Licensed Material (including any Enhanced Licensed Material) confidential and do not Commercialise or disclose it to any third person or use it other than in accordance with the terms of this Agreement. Consultants must not retain copies of the Licensed Material after ceasing to be employed or engaged by the Licensee. The Licensee shall take the necessary steps to impose and enforce this condition.
- 6.7 If the Licensee discovers any error or omission in the Licensed Material it should notify the Licensor accordingly. The Licensee agrees that the Licensor is entitled to make use of such information and include it in the Licensed Material supplied to third parties where the supply of the Licensed Material is specifically allowed by the terms of this Agreement. If a taxable supply within the meaning of the GST Act is made pursuant to this sub-clause 6.7, GST must be included in the price of the supply.

Victorian Coordinated Imagery and Elevation Program

- 6.8 The Licensee acknowledges that there is no transfer of title or ownership of the Licensed Material, and that the copyright and intellectual property in the Licensed Material other than the Third Party Licensed Material shall remain the property of the Licensor and the Licensee shall not deal with the Licensed Material inconsistently therewith and shall not intentionally destroy the Licensed Material except as provided by clauses 4, 13 and 14.
- 6.9 The Licensee shall be supplied with the Licensed Material in the format and in the media set out in the Schedule.
- 6.10 Where the Licensee uses the Licensed Material as permitted under this agreement to produce information products of whatever nature (including analytical, digital or analogue products), the Licensee shall ensure that such products are endorsed with a notice indicating the origin and currency of the Licensed Material, the State of Victoria's ownership and copyright of the Licensed Material and a disclaimer in the terms set out below:
- The State of Victoria does not warrant the accuracy or completeness of information in this publication and any person using or relying upon such information does so on the basis that the State of Victoria shall bear no responsibility or liability whatsoever for any errors, faults, defects or omissions in the information.
- 6.11 The Licensee shall notify the Licensor of any change to the Licensee's address immediately on the occurrence thereof.

7. Interests of Third Parties

- 7.1 The Licensee acknowledges that copyright in the Third Party Licensed Material is owned by a third party. The Licensor warrants that it is permitted to supply the Third Party Licensed Material to the Licensee but the Licensee acknowledges that it may be required to enter a separate agreement with the relevant third party.
- 7.2 This Agreement shall apply to any Third Party Licensed Material that is not the subject of a separate agreement with a third party.
- 7.3 The Licensee agrees to indemnify the Licensor against any liability, loss, claim or demand arising out of action or omission taken by the Licensee with respect to the Third Party Licensed Material in breach of this Agreement.

8. Security

- 8.1 The Licensee shall be solely responsible for the use, supervision, management and control of the Licensed Material provided to the Licensee pursuant to this Agreement.
- 8.2 The Licensee shall make all reasonable efforts to ensure that the Licensed Material is protected at all times from access, use or misuse, damage or destruction by any person not authorised by the Licensor for that purpose.

9. Confidentiality and Privacy

- 9.1 Except for disclosures necessary to meet statutory or regulatory requirements, the Licensee shall treat as confidential the Licensed Material (other than advertising or publicity material) relating in any way to the Licensed Material.
- 9.2 The Licensee shall not without the Licensor's prior consent in writing, copy or disclose or cause to be copied or disclosed the Licensed Material to a third party unless expressly authorised by this Agreement.
- 9.3 The Licensee may only make use of the Licensed Material to the extent necessary to enable the Licensed Material to be used as provided for under this Agreement.
- 9.4 The Licensee may only disclose the Licensed Material to those of its employees by whom it is required to enable the Licensed Material to be used in a manner reasonably contemplated by the Licensor. The Licensee shall ensure that the Licensed Material so disclosed is kept confidential by the employees to whom it is disclosed.
- 9.5 The Licensee shall not use the Licensed Material to produce material or products for the purposes of Commercialisation except as otherwise expressly authorised by this Agreement.
- 9.6 The Licensee's obligations under this clause 9 shall survive the termination of this Agreement.
- 9.7 For the purposes of section 17 of the *Information Privacy Act 2000* (Vic), the Licensee is bound by the Information Privacy Principles and any applicable Code of Practice for the purposes of information provided to it by the Licensor pursuant to this Licence in the same way and to the same extent as the Licensor would have been bound in respect of that Act or practice had it been directly done or engaged in by the Licensor.

10. Warranty and Indemnity

- 10.1 The Licensee acknowledges that it has exercised its independent judgement in acquiring the Licensed Material and has not relied on any representation made by the Licensor which has not been stated expressly in this Agreement or upon any descriptions or illustrations or specifications contained in any document including catalogues or publicity material produced by the Licensor.
- 10.2 The Licensee acknowledges that the Licensed Material cannot be guaranteed error free and further acknowledges that the existence of any errors shall not constitute a breach of this Licence.
- 10.3 The Licensor will replace any defective media at no charge subject to notification of the said defect by the Licensee.

Victorian Coordinated Imagery and Elevation Program

- 10.4 In the event any statute implies terms into this Agreement which cannot be lawfully excluded such terms will apply to this Agreement save that the liability of the Licensor for breach of any such implied term will be limited to the replacement of goods to which the breach relates or the supply of equivalent goods (at the discretion of the Licensor).
- 10.5 To the extent permitted by law the Licensor will not be liable for any indirect or consequential damages arising out of a breach of this Licence or arising out of the supply of defective Licensed Material.
- 10.6 The Licensee agrees to indemnify the Licensor and its officers and employees and agents, in respect of all claims for loss, damage, or injury suffered by any person resulting from use by the Licensee or by a third party of the Licensed Material or any part thereof or of materials produced or derived from the Licensed Material.
- 10.7 The Licensed Material may include date related information in a form that could be incorrectly interpreted during processing. The Licensor gives no warranty that such errors will not occur. The Licensee shall establish the precise nature of any date related information included in the Licensed Material when determining how such data may reasonably be used.

11. Copyright

- 11.1 The Licensee acknowledges that the Licensed Material and associated documentation are subject to copyright. The Licensee shall not during or any time after the expiry or termination of this Licence permit any act which infringes that copyright and without limiting the generality of the foregoing the Licensee specifically acknowledges that it may not copy the Licensed Material except as otherwise expressly authorised by the Agreement.

12. Fee and Renewal Fee

- 12.1 The Licensee shall pay the Fee and where applicable the Renewal Fee. The Fee is payable in advance unless otherwise indicated by the Licensor. The Renewal Fee shall apply to such Further Term as notified to the Licensee by the Licensor. The Licence is contingent upon and shall not come into operation until payment of the Fee and subsequently any Renewal Fee.
- 12.2 The Fee and any Renewal Fee payable by the Licensee shall be inclusive of GST but is exclusive of all other taxes, duties and charges imposed or levied in Australia or overseas imposed on or in connection with the Licence including the supply and installation of the Licensed Material.
- 12.3 Without limiting the foregoing, the Licensee shall be liable for all existing and new taxes, duties or charges imposed on or in connection with the Licence or any supplies made under or in connection with this Agreement and the Renewal Fee, shall be increased to reflect any such taxes duties or charges imposed.
- 12.4 The Licensor may at any time, and from time to time, during the Term or any Further Term vary the Renewal Fee as appropriate under this clause 12 by giving the Licensee written notice of such variation. The Renewal Fee increased under this sub-clause 12.4 shall become the Renewal Fee under this Agreement from the date stipulated in such notice.

13. Termination

- 13.1 This Licence may be terminated in the following circumstances:
 - 13.1.1 If either party is in breach of any term of this Agreement; under this Agreement the other party may, by written notice to the party in breach, specify the breach and request that the breach be remedied within 14 days (or any longer period stated in the notice) after the service of the notice. If the party in breach does not remedy the breach within the period stated in the notice given under this clause, the other party may terminate this Agreement immediately by written notice to the party in breach.
 - 13.1.2 If the Licensor terminates this Agreement under sub-clause 13.1.1 the Licensee may be entitled to a pro-rata refund of the Fee based on the number of unexpired days of the Agreement up to a maximum of fifty percent of the Fee.
 - 13.1.3 If the Licensee becomes, threatens or resolves to become the subject of insolvency proceedings;
 - 13.1.4 If the Licensee, being a firm or partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
 - 13.1.5 If the Licensee intentionally destroys the Licensed Material for any reason; or
 - 13.1.6 If either party advises the other in writing of their intention to terminate this Licence by giving the other party 30 days written notice.
- 13.2 Upon termination the Licensee or its representative shall destroy any remaining copies of the Licensed Material and any documentation associated with it or otherwise return or dispose of such material in the manner directed by the Licensor.
- 13.3 Termination pursuant to this clause shall not affect any rights or remedies which the Licensor or Licensee may have otherwise under this Licence or at law.

14. Updates

- 14.1 Unless specified in the Schedule the Licensor is under no obligation under this Agreement to provide updates of the Licensed Material.
- 14.2 Where an update is provided pursuant to sub-clause 1:

Victorian Coordinated Imagery and Elevation Program

(a) this Agreement will continue to apply in all respects to the update which shall be deemed to be the Licensed Material for the purpose of this Agreement; and

(b) where requested by the Licensor the Licensee shall return to the Licensor all copies of the original Licensed Material or otherwise deal with all copies of the original Licensed Material in accordance with the Licensor's directions.

14.3 Without limiting the Licensee's obligations under this clause, and notwithstanding any other provision of this Agreement, the Licensor shall be under no liability to the Licensee in the event of loss or damage suffered by the Licensee as a result of the Licensor's failure to comply with this clause.

14.4 In the event that an update of the Licensed Material is provided the Licensor shall charge for such update at its then current standard fee for such service.

15. Merging of Material

15.1 The Licensee may merge all or any part of the Licensed Material with any other material.

15.2 If the Licensed Material is merged with other material as provided for in sub-clause 1:

(a) the costs associated with merging the material or the costs arising out of the investigation of the effects of merging the material will be borne solely by the Licensee;

(b) the Licensee will fully indemnify the Licensor against all liability which may be incurred by the Licensor if such merging of material infringes any Intellectual Property Rights of a third person or otherwise cause the Licensor to suffer loss, damage or expense; and

(c) the Licensee shall not Commercialise or otherwise disclose to any third party the material so merged to any third party, unless expressly permitted in the Schedule, other than the Consultants described in sub-clause 6.6.

15.3 Upon being merged with other material the Licensed Material remains the property of the Licensor in all respects.

15.4 This Agreement shall apply to that part of the Licensed Material that is merged with other material.

15.5 The Licensee shall execute such documents and perform such other acts as are necessary in order to give effect to sub-clause 15.3.

16. Assignment

16.1 The benefit of this Agreement shall not be dealt with in any way by the Licensee (whether by assignment, sub-licensing or otherwise) without the Licensor's written consent which will not be unreasonably withheld.

16.2 The Licensor may assign its rights and obligations under this agreement to such person or entity as takes over the assets or assumes the functions of the Licensor from time to time.

17. Waiver

17.1 Failure or neglect by either party to enforce at any time any of the provisions of this Agreement shall not be construed or deemed to be a waiver of that party's rights under this Licence.

18. Governing Law

18.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Victoria.

19. Application

19.1 Where the Licensee is an agency of the State of Victoria, such that it is not permitted to enter into a binding legal agreement except as the State of Victoria, then the conditions shall be read as merely giving rise to an arrangement between the Department of Sustainability and Environment.

SCHEDULE

Reference No.				
Licensee -				
Address -				
Licensed Material -	Product:			
	Portion:			
	Area:			
	Computers: ⁷			
	Format			
	Media			
Third Party Licensed Material -	N/A			
Purpose for which the Licensed Material is to be used -	To assist with work being performed by the Licensee and or their consultants for the purposes of the Licensee's projects exclusively.			
Site where the Licensed Material is to be used -	Within the offices of the Licensee and or their consultants.			
Commencement Date -				
Renewal Date				
Duration of Licence ⁸ -	Annual			
Fee (GST-inclusive)- Renewal Fee (subject to variation under cl.12)-	\$			
Frequency of updates (if any)	Not specified			

Address for Notices

Licensee -	
Licensor	<p>The State of Victoria through the xxx (postal address)</p> <p>Telephone (contact number) Facsimile (contact number)</p>

⁷ Permitted number of computers

⁸ Subject to grant of a Further Term

FURTHER REFERENCES

Guidelines for Setting Fees and User Charges (published annually by the Department of Treasury and Finance)

www.vcec.gov.au/regulatory

Victorian Competitive Neutrality Policy (2000) and Competitive Neutrality Policy Guide to

Implementation (2001) www.vcec.vic.gov.au/Competitive

Privacy Guidelines www.privacy.vic.gov.au

Victorian Spatial Information Strategy (2004-2007) www.land.vic.gov.au/vsc

Spatial Information Guidelines for Victoria www.land.vic.gov.au/spatial

Spatial Information Management Framework www.land.vic.gov.au/spatial

Victorian Spatial Information Strategy (2008-2010) (forthcoming)

Guidelines for Access and Pricing of Geographic Information for DSE & DPI 2003

Coordinated Imagery Program www.land.vic.gov.au/coordinated imagery program

Vicmap www.land.vic.gov.au/vicmap

Commonwealth IT IP Guidelines <http://www.dbcde.gov.au/>

Intellectual Property Australia: <http://www.ipaustralia.gov.au>

GLOSSARY

Access infrastructure	The way in which spatial information may be located and accessed. It broadly includes the policy framework, the physical network infrastructure and the spatial industry marketplace.
Custodian	The entity responsible for a dataset. That is, the organisation formally responsible for ensuring accuracy, currency, storage, security, and distribution of the data. The custodian need not be directly involved in maintaining or supplying the data, but should be in a position to direct such activities.
Data	The base level of information stored in electronic or other databases. Data can exist in many formats including digital data, imagery such as aerial photographs and satellite images, and hardcopy products such as maps or plans.
Data Service Provider (DSP)	A specific type of value added reseller having a formal agreement with a framework or key business information custodian for marketing and value adding. Under the agreement the DSP is not required to licence the information, but may only value add and derive additional products or services from the base on behalf of licensed end users of the base information.
Information	The result of manipulating, analysing and interpreting data to produce a result which adds value or utility to the original data
Metadata	Data about data.
Spatial Information Infrastructure	The spatial information essential to the social, economic, and environmental development of Victoria.
Value Added Reseller (VAR)	A licensed user of spatial information deriving new or significantly enhanced products from that information. Unlike Data Service Providers, VARs are licensed users of the base information, and provided the licence conditions and intellectual property rights are met, may on-sell their derived products to any user, whether or not these other users licence the base information.
Vicmap Image Directory	A public discovery tool for aerial and satellite imagery. The system is designed to allow the providers of image products to list their current and proposed products. The system also provides a way for users to view current and proposed products, as well as request products.
Victorian Spatial Data Directory (VSDD)	The directory of metadata that describes data sets that originate or may be of use in Victoria. It is a public resource available on the Internet. It includes both current and archived data.
Victorian Spatial Information Strategy 2004-2007 (VSIS)	The fourth in the series of strategies that have shaped the spatial information environment in Victoria since 1991. The aim of VSIS is to develop a more cohesive whole-of-Government approach to the acquisition and application of spatial information; and a fully coordinated whole-of-industry approach to spatial information, coordinating the objectives and activities of the public, private and academic sectors.
VSIS Guidelines (to be read in conjunction with VSIS)	A series of Guideline documents elaborating on supporting the VSIS and detailing the Management Principles for Spatial Information.
Spatial Information Management Framework (SIMF)	The Framework Information Guidelines define Framework Information and outlines how it is managed in Victoria. It is designed to complement the Victorian Spatial Information Strategy 2004-2007 and accompanying guidelines.

APPENDIX 1 – INTELLECTUAL PROPERTY OWNERSHIP OPTIONS MATRIX

The following Ownership Options from the ‘*Commonwealth IT IP Guidelines*’ prepared by Mr Philip Crisp of the Australian Government Solicitor working as Principal Consultant in liaison with the Department of Communications, Information Technology and the Arts, have been reviewed and considered. Some highlight the difficulties that can arise with joint ownership of IP. However, similar versions or interpretations could be included in some individual stakeholder licenses on occasions in consultation with Purchase Partners.

Full details can be found at: <http://www.dbcde.gov.au/> under Related Links, click on Intellectual Property then Commonwealth IT IP Guidelines

Ownership Options

Single Ownership

Due to the complexity and limitations of shared Intellectual Property (IP) ownership, DSE on behalf of the State Government of Victoria, purchases data as a sole owner of all Intellectual Property. Spatial Information Infrastructure (SII) a division of the Department of Sustainability and Environment (DSE), licenses all participating Purchase Partners to use data of their initial interest within their organisations.

Memorandum of Understanding

There may be arrangements regarding IP which mimic licence agreements that may be executed between separate legal entities. Another term for an ‘arrangement’ is Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA). The non-owning departments could be expected not to exploit the material unless an appropriate arrangement was made with the owning agency.

Joint Ownership

With joint ownership, IP in the original material stays with the original IP owner, whilst the whole derivative work, embodying some of the original material and any fresh layer of IP arising from the additional efforts of the improver, vests jointly in the parties. Joint ownership of copyright has the consequence—often inconvenient—that the permission of both parties is required for any use or exploitation. In other words, joint owners must each give their consent to any use or exploitation. It is not possible, in the absence of any agreement, for one owner to exercise their rights independently.

Severable Ownership

With severable ownership the parties agree to vary the manner in which the co-ownership is to operate, by providing that any use or exploitation may be undertaken separately by (or with the consent of) either party (equivalent to a cheque account which is set up so that either party may sign). This form of co-ownership may be appropriate in some cases. A similar result could be achieved by licensing: the parties remain joint owners, but they jointly licence each other to separately exercise the IP rights. For example, the licences can be arranged to cover different territory, time periods and/or consumer markets, so that they do not undercut each other’s commercialisation efforts.

Consolidated Ownership

With consolidated ownership, IP in the whole derivative (embodying some of the original material and any fresh layer of IP arising from the additional efforts of the improver) consolidates with the IP in the original material. IP in both is vested in choices about ownership and licensing of IP.

Concurrent Ownership

With concurrent ownership, IP in the whole derivative (including some of the original material and any fresh layer of IP arising from the additional efforts of the improver) vests in the improver, whilst the original IP owner retains concurrent ownership in the original version. The two parties exercise IP concurrently in different versions of the material. The original owner does not have IP rights in relation to the derivative as such. Conversely, the improver would not be permitted to exercise IP in the original version, except insofar as it is embedded in the derivative.

Severable ownership is a limiting case of concurrent ownership, in that the parties exercise ownership simultaneously in the same version of the material. Severable ownership will tend to degrade into concurrent ownership. This arises because each owner is fully entitled to exercise IP rights in the derivative independently and those rights include the right to make a further derivative product. When one of the parties does so, IP in the further derivative would be owned by that party alone. When both parties have done so, each will concurrently own IP rights in their respective versions. There is little use made of the concurrent/severable model in the established contracting frameworks but it is possible that more use could be made of it. Concurrent ownership would be useful where the two parties both see their corporate mission as including further development of the material, but pursue different development paths.