The **MESH Data Provider Agreement** is a formal agreement between the MESH Partner, JNCC Support Co., and anyone providing material (i.e. data such as habitat maps) for use by the Partnership. The Agreement is required to ensure both parties (i.e. you as a Data Provider and us as the data receiver) have a clear understanding of the basis upon which you have provided the data and upon which we can hold, use and disseminate them. This is particularly important given that much of the data will be used to compile new habitat maps which will be disseminated via the MESH website.
MESH Data Provider Agreement

Introduction

The MESH Data Provider Agreement is a formal agreement between the MESH Partner, JNCC Support Co., and anyone providing material (i.e. data such as habitat maps) for use by the Partnership. The Agreement is required to ensure both parties (i.e. you as a Data Provider and us as the data receiver) have a clear understanding of the basis upon which you have provided the data and upon which we can hold, use and disseminate them. This is particularly important given that much of the data will be used to compile new habitat maps which will be disseminated via the MESH website.

IMPORTANT: By making data available to the MESH Partnership you, the Data Provider, are agreeing to the following MESH Data Provider Agreement. Please read it carefully.

Content

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1. Definitions

In this Agreement the terms below have the following meanings:

1.1. ‘Additional Terms of Access’ means the restrictions set by the Data Provider on access to the Material, as set out in Schedule 3.

1.2. ‘Agreement’ refers to this document and any documents attached to or referred to in it.
1.3. ‘Background Material’ means the original data as provided to the MESH Partner (i.e. before any value-added processing), as described in Article 17 of the MESH Joint Convention.

1.4. ‘Data Owner’ refers to the actual owner of the Background Material.

1.5. ‘Data Processor’ means a member of the MESH Partner who will process the data.

1.6. ‘Data Provider’ refers to the actual owner of the Background Material or an agent of the owner through whom the data are provided to the MESH Partner.

1.7. ‘DPA’ means the Data Protection Act 1998 and any legislation amending or replacing that Act and any subsidiary legislation made under it.

1.8. ‘Foreground Material’ refers to the provider’s data after they have been processed from their original state, as described in Article 17 of the MESH Joint Convention.

1.9. ‘MESH Partner’ means an organisation within the MESH Partnership, particularly the one entering this agreement.

1.10. ‘MESH Partnership’ means all the organisations who are signatories to the MESH Joint Convention.

1.11. ‘MESH webGIS’ means the interactive mapping website with the URL www.searchmesh.net/webGIS or any URL replacing it.

1.12. ‘MESH webGIS Terms and Conditions’ means the terms and conditions for use of the MESH webGIS which are periodically published on the site.

1.13. ‘Material’ is a collective term covering both the Background and Foreground Material.

1.14. ‘Metadata’ means contextual information which provides a summary of the dataset (e.g. type of data, owner, methods of collection)

1.15. ‘Website Host’ means the organisation from time to time appointed by the MESH Partnership to host the MESH website on its behalf;

2. The Licence

2.1. The Data Provider grants the MESH Partner a non-exclusive licence to access, hold and use the Background Material defined in Appendix A in accordance with the following conditions (delete any that do not apply):

2.2. A copy of the Background Material in the original format supplied by the Data Provider can be:

2.2.1. Held only in its original format

2.2.2. Converted to other formats (e.g. electronic)

2.2.3. Used and interpreted in non-commercial operations of the MESH Partner

2.2.4. Displayed on the MESH webGIS (www.searchMESH.net/webGIS) subject to the MESH webGIS terms and conditions
2.2.5. Processed into Foreground Material (such as EUNIS habitat maps and aggregated datasets)

2.2.6. Foreground Material shared within the MESH Partnership

2.2.7. Foreground Material shared with third parties

3. **Rights and obligations of the Data Provider**

3.1. The Data Provider is free to make available, use or publish the Material elsewhere.

3.2. The Data Provider will notify the MESH Partner of any change in copyright ownership affecting the Material.

3.3. The Data Provider will notify the MESH Partner of any confidentiality, privacy or data protection issues pertaining to the Material and in particular will identify any items of the Material which the Data Owner has not consented be used in the manner permitted by this Agreement.

3.4. The Data Provider will provide metadata to accompany the Background Material, using the metadata standard promoted by the MESH Partnership.

3.5. The metadata elements supplied by the Data provider will include a set of confidence assessment scores which will allow potential users to confidently assess the suitability of the material for their proposed use. An overall confidence score will be calculated from individual scores: this overall score gives an indication of the suitability for use of the map for conservation management.

4. **Undertakings of the MESH Partner**

4.1. To provide the Data Provider, should they request it, with a copy of the Background Material if it is modified according to paragraph 2.2.2 above.

4.2. To make available Foreground Material arising from the Background Material of this Agreement in accordance with the terms of the MESH Joint Convention or the MESH webGIS Terms and Conditions as appropriate.

4.3. Where a MESH Partner holds information covered by Directive 2003/4/EC on public access to environmental information, the Partner may be obliged to disclose the information held to any person who makes an application under the regulatory implementations of that Directive. There are exceptions within the Directive, such as the release of data being likely to cause harm to the environment or that the release would damage the interests of the Data Provider or Data Owner. It must be shown that one of these exceptions is applicable for the data not to be released upon request. Each time the Data Provider volunteers a new or updated set of Background Material to the MESH Partner, the MESH Partner will negotiate its public availability, in accordance with the Environmental Information Regulations, with the Data Provider. Where agreement is not possible the Data Provider may refuse to submit the Background Material.

4.4. The MESH Partner will provide the Data Provider with an opportunity to make any copyright notices and acknowledgements associated with the Material available with both the Background and Foreground Material.
4.5. The MESH Partner is not under any obligation to take legal action on behalf of the Data Provider or other rights holders in the event of breach of any intellectual property rights in the Background Material supplied.

5. **Data Protection**

Any personal data within the datasets outlined in Appendix A will be dealt with by the Data Processor in accordance with the Data Protection Principles under the DPA. Email addresses of the Data Owner and Contact which are provided as elements of the metadata standard will be disguised on the MESH website.

6. **Warranties of the Data Provider**

6.1. The Data Provider warrants to the MESH Partner that each of the statements in this paragraph 6.1 is true.

6.1.1. The Data Provider is either the owner of the copyright and all other intellectual property rights in the Material, or that it has the necessary rights to grant the licence to the MESH Partner as set out in paragraph 2 above.

6.1.2. The Data Provider is not under any obligation or disability created by law, contract or otherwise, which would in any manner or to any extent prevent or restrict it from entering into and fully performing this Agreement.

6.1.3. Release of the Material in accordance with the terms of this Agreement does not and will not contravene any laws, including but not limited to the law relating to defamation, or obscenity.

6.1.4. The Data Provider has taken reasonable steps to maximise the quality of the Material.

7. **Limitations of Liability of the MESH Partner**

7.1. The MESH Partner will take every care to preserve the physical integrity of the Material but will have no liability for the Material or for the loss of or damage to the Material.

7.2. The MESH webGIS Terms and Conditions contain provisions designed to prevent any claim being made against The MESH Partner or the Data Provider in respect of any of the Material. However, if a claim is made against The MESH Partner, where the data provider is at fault, then the Data Provider will meet in full the cost of that claim and any expenses that the MESH Partnership has reasonably incurred in dealing with it. The MESH Partner will allow the Data Provider to take charge of the claim so that the Data Provider can mitigate its level of exposure under this clause and the MESH Partner will give the Data Provider all reasonable assistance in dealing with the claim.

7.3. The MESH Partner excludes, to the fullest extent permitted by law, any liability that it may have to the Data Provider under this Agreement or in respect of the use of the Material on the MESH webGIS.

7.4. Neither party will be liable to the other for any failure to perform or for delay in performing this obligation if the failure or delay is caused by circumstances beyond its reasonable control.
8. **Termination and withdrawal of Material**

8.1. Either party may terminate this Agreement at any time by giving not less than six months’ notice to the other.

8.2. In addition to any other remedy which either party may have, either party may terminate this Agreement with immediate effect by giving notice to the other party if the other party has committed a breach of this Agreement which cannot be remedied or is not remedied within 30 days after a notice from the first party specifying the breach and requiring its remedy.

8.3. On termination of this Agreement, or withdrawal of Material as described in clause 8.2, the MESH Partner will delete and destroy all copies of Background Material that it holds. However it will continue to hold and distribute any Foreground Material based on it.

9. **General**

9.1. **Notices.** Any notice to be given under this Agreement must be in writing, may be delivered to the other party by any of the methods set out in the left hand column below and will be deemed to be received on the corresponding day set out in the right hand column.

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<th>Method of service</th>
<th>Deemed day of receipt</th>
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<td>By hand</td>
<td>The day of delivery</td>
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<td>By pre-paid national business post</td>
<td>The second Business Day after posting</td>
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<tr>
<td>By fax (provided the sender’s fax machine confirms complete and error-free transmission to the correct fax number)</td>
<td>The next Business Day after sending or, if sent before 16.00 (sender’s local time) on the same Business Day</td>
</tr>
<tr>
<td>By email</td>
<td>The next Business Day after sending or, if sent before 16.00 (sender’s local time) on the same Business Day</td>
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9.2. **Headings.** The headings in this Agreement are for ease of reference only and do not affect the interpretation of this Agreement.

9.3. **Assignment etc.** No party may assign or otherwise transfer this Agreement or any of its rights or obligations under it, whether in whole or in part.

9.4. **Illegal/unenforceable provisions.** If the whole or any part of any provision of this Agreement is void or unenforceable in any jurisdiction, the other provisions of this Agreement, and the rest of the void or unenforceable provision, will continue in force in that jurisdiction, and the validity and enforceability of that provision in any other jurisdiction will not be affected.

9.5. **Waiver of rights.** If a party fails to enforce or delays in enforcing an obligation of any other party, or fails to exercise or delays in exercising a right under this Agreement, the failure or delay will not affect their right to enforce that obligation or constitute a waiver of that right. Any waiver by a party of any provision of this
Agreement will not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.

9.6. **No agency etc.** Nothing in this Agreement is intended to create a joint venture between the parties or the relationship between them of principal and agent. Neither party has any authority to make any representation or commitment or incur any liability on behalf of the other.

9.7. **Entire agreement.** This Agreement and any Schedule or Schedules (which are incorporated into and made a part of this Agreement) constitute the entire agreement between the parties relating to its subject-matter. Each party acknowledges that it has not entered into this Agreement on the basis of any warranty, representation, statement, agreement or undertaking except those expressly set out in this Agreement. Each party waives any claim for breach of, or any right to rescind this Agreement in respect of, any representation that is not an express provision of this Agreement. However, this clause does not exclude any liability which any party may have to any other (or any right which any party may have to rescind this Agreement) in respect of any fraudulent misrepresentation or fraudulent concealment prior to the execution of this Agreement.

9.8. **Variations.** No variation of this Agreement will be effective unless it is made in writing and signed by each party or its authorised representative.

9.9. **Third parties.** No person who is not a party to this Agreement has any right to prevent the variation or cancellation of any provision of this Agreement or its or termination, and no person who is not a party to this Agreement may enforce any benefit conferred upon them by this Agreement, unless this Agreement expressly provides otherwise.

9.10. **Governing law, etc.** This Agreement will be governed by and construed in accordance with English law. The English Courts will have exclusive jurisdiction to deal with any dispute which has arisen or may arise out of or in connection with this Agreement, except that any party may bring proceedings for an injunction in any jurisdiction.
Signed on behalf of the Data Provider

Signed…………………………………………………………………………

Date………………………………

Organisation……………………………………………………………

Position……………………………………………………………………

Signed on behalf of the MESH Partner

Signed…………………………………………………………………………

Date………………………………

Organisation……………………………………………………………

Position……………………………………………………………………
Appendix A – Datasets provided under the Agreement

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<th>Name of dataset</th>
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