

Data Sharing Protocol for IEMR – MARCH 14, 2003

This draft protocol for a process for data sharing involving datasets owned or controlled by the IEMR considers three distinct ownership situations:

- A. Data paid for, collected and owned solely by the Institute
- B. Data provided to the Institute through memorandum of understanding for their use, with restrictive conditions regarding sharing with third parties.
- C. Data collected through joint projects and shared among partners.

Data sharing agreements will be required in all cases where IEMR provides data to either a partner or a third party. The Institute Chair or his delegate must authorize all releases of data. In the case of a third party request for data, the following general conditions must be met for all requests:

- 1. A detailed proposal indicating the research questions that are being addressed and the role of the data requested, including a wiring diagram demonstrating the linkage to noise disturbance, if appropriate.
- 2. Written confirmation from the other owners of the data granting permission to use the data for the research questions proposed must be provided to the IEMR before release. All conditions on data use identified in other MOU's with other partners must be adhered to. In cases where the data is managed primarily by other agencies, the request will be forwarded to those agencies.
- 3. The research proponent must provide an ethical use of data agreement, as per the Memorial University format with regard to how the data will be used in a thesis and any publication that might arise from a thesis.
- 4. The Institute retains ownership of the data and has the right to continue to use the data for their own purposes.
- 5. Copies of all reports / research publications using IEMR data must be provided to the chair within 30 days of publication, and must include acknowledgement of IEMR as owner of the data.
- 6. All data provided will be accompanied by a data use license (Appendix A).

A. Data Owned Solely by IEMR

All data collected by IEMR or its staff and contractors remains the property of the IEMR. The Chair or his delegate must authorize any use and is subject to a data use agreement addressing the following:

- 1. A detailed proposal indicating the research questions that are being addressed and the role of the data requested, including a wiring diagram demonstrating the linkage to noise disturbance, if appropriate.
- 2. The research proponent must provide an ethical use of data agreement, as per the Memorial University format with regard to how the data will be used in a thesis and any publication that might arise from the thesis.
- 3. The Institute retains ownership of the data and has the right to continue to use the data for their own purposes.

4. Copies of all reports / research publications using IEMR data must be provided to the chair within 30 days of publication, and must acknowledge IEMR as owner of the data.

B. *Data provided to the Institute through memorandum of understanding regarding use, with restrictive conditions regarding sharing with third parties*

All data received by the IEMR from DND, the provinces of Newfoundland and Labrador and Quebec, and First Nations Governments will be considered confidential unless otherwise indicated and agreed upon. See Appendix B for an example of the confidentiality agreement for use of Innu Nation data. Any request for data to the IEMR will be forwarded to the owner of the data. If the data are not confidential or covered by an MOU, data may be provided. In this case, a copy of the request and IEMR response will be forwarded to the agency that provided IEMR the data. All data requests must be authorized by the IEMR Chair or his designate.

C. *Data collected through joint projects and shared among partners*

In the case of partnerships, IEMR will require data sharing agreements prior to the collection of data. These agreements will clearly identify:

1. What data are collected, and details of data collection costs borne by each partner.
2. Who is responsible for collection, recording and analysis of data.
3. Who is responsible for writing reports and any other authorized publication.
4. All scientific publications using IEMR data will follow the IEMR protocol for publications.
5. All data collected must be provided in digital form (Excel spreadsheet or WORD document) within 2 weeks of collection to all project partners.

Appendix A

License Agreement

The accompanying data are provided to the Recipient subject to the following terms and conditions. It will be deemed that the Recipient accepts these terms and conditions unless written notification is provided to the Institute for Environmental Monitoring and Research (IEMR) Office in Goose Bay (fax: 709-896-3076) within 14 days of the date appearing on the letter which accompanies this agreement.

The "Recipient" refers only to direct employees, but does not include members or representatives of other associated or external organizations. It is not IEMR's intention to place this data in the public domain at this time, and this transfer does not constitute such an act.

1. IEMR owns and retains exclusive proprietary rights and title to the data;
2. IEMR grants Recipient a non-exclusive, non-transferable license solely for the intended purpose described in the letter conveying the data;
3. Recipient may not make copies or otherwise disseminate the data to third parties – any requesters will be referred to IEMR for separate arrangements;
4. Recipient may only assign rights and obligations under this Agreement with the prior written consent of IEMR;
5. Recipient agrees to load the data only on a single-user computer or workstation not attached to a network, or a network server.
6. Recipient may not alter or in any way misrepresent the data;
7. Recipient will consult and obtain IEMR concurrence with any application which makes use of the data;
8. Recipient will provide IEMR an opportunity to participate in any work and to review any draft reports which incorporate the data;
9. Recipient will, in a timely manner, advise its employees or agents of the existence of this Agreement and require them to abide by its terms; and
10. Recipient will prominently attribute IEMR ownership and contribution in any use made of the data.

Warranty and Disclaimer - IEMR specifically disclaims any warranty of fitness for a particular purpose. IEMR has the right to recall all copies of the data at any time. If the accompanying data is jointly owned by IEMR, IEMR will ensure appropriate advance consultation/notification with the other owner(s).

Appendix B – Sample Confidentiality Agreement for Data provided by Innu Nation

**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT
REGARDING THE PROVISION OF INNU NATION ENVIRONMENTAL
KNOWLEDGE DATA TO THE INSTITUTE FOR ENVIRONMENTAL
MONITORING AND RESEARCH**

This agreement is made as of 20 February 1998 by and between THE INSTITUTE FOR ENVIRONMENTAL MONITORING AND RESEARCH ("Receiver") having its principal office at Happy Valley-Goose Bay, Labrador, and THE INNU NATION ("Provider") having its principal office at Sheshatshui, Labrador.

WHEREAS, Receiver desires to have disclosed to it and Provider desires to disclose to Receiver certain information ("Information") possessed by Provider relevant to studies of wildlife and the environment organized and commissioned by Receiver ("Studies").

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, **THE PARTIES AGREE AS FOLLOWS:**

1. No Joint Venture

The parties hereto agree that this Agreement is for the purposes of protecting Information only. This Agreement is not a joint venture or other such business arrangement.

2. Definition of Information

Receiver acknowledges that the Information is owned by Provider and is a valuable asset thereof. The term Information shall include:

- (a) all information and data furnished by Provider to Receiver or its employees or agents or through inspection of Provider's property, whether in oral, written, graphic or machine-readable form, including but not limited to, aboriginal environmental knowledge, traditional ecological knowledge, local knowledge, indigenous environmental knowledge, land use and occupation knowledge, empirical observations about the local environment, systems of land tenure and self-management governing use of resources, traditions, beliefs, legends and customs;
- (b) third-party confidential information disclosed to Receiver by Provider;
- (c) all working papers, maps, graphics, interim or final reports and all other materials generated by Provider in the course of carrying out its work; and
- (d) all information designated by Provider as proprietary and/or confidential or that, by the nature of the circumstances surrounding disclosure, ought to be treated as proprietary and/or confidential except such information and data as the parties agree in writing is not proprietary or confidential.

3. Non-disclosure and Non-use of Information

Receiver agrees to accept and use Information only for the purpose of completing Studies on wildlife and the environment in Labrador and Northern Quebec, and for no other purpose whatsoever.

4. Permitted Use of Information

Provider hereby grants to Receiver the right to use the Information to assist Receiver in the Studies subject to the limitations and restrictions contained in this Agreement. Provider agrees that Receiver may refer to and incorporate aspects of the Information in Receiver's Studies.

5. Limitation on Access

Receiver shall restrict disclosure of such Information to its employees, officers, affiliated researchers with a need to know, and shall advise such individuals of the obligations assumed herein.

Receiver agrees to ensure that in all research and documents which make use of the Provider's Information, the Provider's ownership of the Information shall be acknowledged in writing. Receiver agrees to notify in writing all employees and affiliated researchers that the Provider's ownership of Information must be acknowledged in any dissemination of the Information, or in any documents which make use of this Information.

These restrictions on the use or disclosure of Information shall not apply to any Information:

- (i) which Receiver can establish by documentary evidence was at the time of disclosure to Receiver known to Receiver or any affiliate of Receiver free of restriction (or subject to lesser restrictions than are contained herein); or
- (ii) which Receiver is required by applicable law to disclose; provided, that Receiver, as promptly as possible after determining that it is obligated to make such disclosure and prior to making such disclosure, notifies the Provider of its intention to make such disclosure and take reasonable steps to limit the amount of Information so disclosed and protect its confidentiality.

6. Return of Information

Receiver will return all Information in written, printed and machine-readable form, including any copies made, to Provider upon demand.

7. Survival

All obligations created by this Agreement shall survive change or termination of the parties' relationship. This Agreement shall survive and enure to the benefit of and be binding upon the parties, their successors and assigns, and the obligations created by this Agreement survive any termination.

8. Injunctive Relief

Receiver acknowledges that Provider will be irreparably harmed if Receiver's obligations under this Agreement are not specifically enforced and that Provider would not have an adequate remedy at law in the event of an actual or threatened violation by Receiver of its obligations. Therefore, Receiver agrees and hereby consents that Provider shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violations or breaches by Receiver, its employees or agents without the necessity of Provider showing actual damages or irreparable harm or that monetary damages would not afford an adequate remedy.

9. Indemnification

Receiver shall fully indemnify and hold harmless Provider for any damage, expense, claim or liability arising out of Receiver's breach of or failure to perform its obligations pursuant to this Agreement.

10. Arbitration

All disputes, controversies or differences which may arise between the parties hereto out of, or in relation to, or in connection with this Agreement, shall be settled by mutual consultation, and, if necessary, by a mediation procedure to be agreed upon between the parties in good faith as promptly as possible, but failing an amicable settlement, shall be finally settled by arbitration in the English language, at Toronto, Ontario, in accordance with the Ontario Arbitration Act, at the present time in force. The award of the arbitration shall be final and binding upon the parties hereto, and enforceable in any court of competent jurisdiction.

11. General

11.1 No Assignment

This Agreement may not be assigned by the Receiver. The obligations of the Receiver under this Agreement shall not terminate upon any attempted assignment.

11.2 Governing Law and Venue

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario without reference to the principles of conflict of laws. Any suit under this Agreement shall only be brought in a court of competent jurisdiction in the Province of Ontario.

11.3 Severability

If any part, term or provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law of a federal, provincial or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be affected thereby.

11.4 Entire Agreement

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and with respect to the terms contained herein and supersedes all prior agreements or understandings. This Agreement shall not be modified except in writing, signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives with full rights, power and authority to enter into and perform this Agreement.

THE INNU NATION
(PROVIDER)

Per: _____
Title

INSTITUTE FOR ENVIRONMENTAL
MONITORING AND RESEARCH (RECEIVER)

Per : _____
Title