



ODYSSEA

Operating a network of integrated observatory
systems in the Mediterranean Sea

Project Deliverable Report

Deliverable Number: 13.3

Deliverable Title: Recommendations and proposals for new regulatory regimes

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Work Package Number: 13



This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 727277

ODYSSEA Project Information	
Project full title	ODYSSEA: Operating a network of integrated observatory systems in the Mediterranean Sea
Project acronym	ODYSSEA
Grant agreement number	727277
Project coordinator	Georgios Sylaios, DUTH
Project start date and duration	1 st June 2017, 54 months
Project website	http://ODYSSEApatform.eu/

Deliverable Information	
Work package number	13
Work package title	
Deliverable number	13.3
Deliverable title	Recommendations and proposals for new regulatory regimes
Description	
Lead beneficiary	Agora (through Pearl Cohen)
Lead Author(s)	Meny Broid
Contributor(s)	Meny Broid, Dotan Hammer, Simon van Dam, Bracha Ehrman
Revision number	V1
Revision Date	21-03-2018
Status (Final (F), Draft (D), Revised Draft (RV))	

Dissemination level (Public (PU), Restricted to other program participants (PP), Restricted to a group specified by the consortium (RE), Confidential for consortium members only (CO))	PU
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Document History			
Revision	Date	Modification	Author
1	18/02/2018	Initial draft	Meny Broid and Dotan Hammer
1.1	19/03/2018	Comments	Bracha Ehrman
1.2	20/03/2018	Comments	Simon van Dam
1.3	23/03/2018	Further drafting	Dotan Hammer

Approvals				
	Name	Organisation	Date	Signature (initials)
Coordinator				
WP Leaders				

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Executive Summary

ODYSSEA intends to develop, operate and demonstrate an **interoperable and cost-effective platform** that fully integrates networks of observing and forecasting systems across the Mediterranean basin, addressing both the open sea and the coastal zone.

This Deliverable provides an analysis of the legal regime that governs the data sources proposed for inclusion and use by the ODYSSEA Platform. Based on analysis of the terms of use for the major relevant data sources and conclusions reached, this document also recommends steps to move forward with accessing these data on a practical level including a draft license agreement to be used by ODYSSEA consortium members when dealing with data providers and owners of data sources.

For reading convenience, Appendix A at the end of the Deliverable provides a quick reference of the conclusions and recommendations with respect to each data source.

1 Background and Introduction

1.1 About ODYSSEA – overview

ODYSSEA is a European Union funded program whose purpose is to “develop, operate and demonstrate an interoperable and cost-effective platform that fully integrates networks of observing and forecasting systems across the Mediterranean basin, addressing both the open sea and the coastal zone”.

As stated in the ODYSSEA Description of Action, the “platform will collect its data from the many databases maintained by agencies, public authorities, research institutions and universities of Mediterranean EU and non-EU countries, integrating existing earth observation facilities and networks in the Mediterranean Sea ...”.

These data and their physical, chemical and biological dimensions can meet the needs of a multitude of end-users and it is this multiple functioning of underlying marine data across disciplines and sectors that makes ODYSSEA a very efficient option. For the ODYSSEA platform to be efficient and effective, the data need to be publicly available and interoperable. Further, ODYSSEA is expected to make the data available to various end-user groups and stakeholders, possibly in a commercial context, as a single, one-stop portal for Mediterranean environmental data.

1.2 About the legal framework and regulatory regime governing data – overview

Society understands that information can be an asset which, when leveraged properly, will yield tremendous advantages. The law therefore provides various types of protections for certain categories of data. It does so because of the social understanding that granting such legal protections are crucial to intellectual, scientific and academic creations.

Namely, if members of the intellectual, scientific and academic communities are to continue their work, they have to receive an appropriate reward for the use of their work, as must their enterprises or organizations, in order to be able to finance this work. The investment required to produce data is considerable. Society therefore realizes that adequate legal protection of data-related rights is necessary in order to guarantee the availability of such a reward and provide the opportunity for satisfactory returns on this investment.

This is why existing legal regimes have rules that govern data and those rules may pose hurdles or bottlenecks in the way of the envisioned use of data in the ODYSSEA programme.

Regulatory regimes governing data can be categorized as follows:

- Materials that express some (even minimal) level of originality (creativity) are protectable under copyright.
- Collection of data that results from investment of labour or money is protectable across the EU under database rights.
- Information that is considered unique to a business and provides it's a competitive advantage is protectable as trade secret.
- Data that relates to individual persons is protectable under data protection laws.

Appendix C at the end of this Deliverable provides a more detailed overview of the regulatory (i.e., legal) regime governing data.

Practically speaking, the potential implications of protection that legal regimes give to information or data are the following:

- The right-holder is given rights to control the data and its use.
- The right to monetize the materials is given exclusively to the data owner.
- The data owner can legally exclude others from various types of dealings in the data.
- The law will enforce these rights against infringers, by way of awarding damages for the infringement and injunction against further violation.

In the present context, the preliminary tool for overcoming these bottlenecks is the receipt of proper license and consent by the data owner.

1.3 About this Deliverable

Given ODYSSEA's desire to use data from existing programmes on the one hand, and the existing legal regime on the protectability of such data on the other hand, it is paramount to analyze the permissibility, conditions and limitation of such desired use by the ODYSSEA platform. For this purpose, it is required to perform an analysis of the state of the art in the legal regime with respect to the multi-use of data, ownership and privacy in general.

To this end, this Deliverable conducts a legal study of the permissibility, conditions and limitation of using the following selected data sources:¹

- Copernicus Marine Environment Monitoring Service (CMEMS)
- EMODnet
- SeaDataNet
- MonGOOS
- GEOSS
- GOOS
- Med-OBIS
- GBIF
- AquaMaps
- MAPAMED
- Vulnerable Marine Ecosystem (VME)
- Geomorphology of the Oceans
- InterRidge Global Database of Active Submarine Hydrothermal Vent Fields
- World Database on Protected Areas
- Spatial Data for the Red List of Threatened Species
- Global Map of Human Impacts to Marine Ecosystems
- Ocean Data Viewer
- BirdLife
- USGS

For each data source, the study looks into whether and under what conditions and fees the source allows the use of its data for onward distribution in a commercial context.

This study begins with a more detailed look into Copernicus Marine Environment Monitoring Service (CMEMS) and its legal and regulatory background, so as to provide the reader a more detailed representative sample of the evolution of a marine environment platform and its regulatory background. We then continue with the additional data sources in a more concise and actionable review.

¹ These data sources represent the (expected) majority of the data that will be integrated into ODYSSEA. D13.1 listed 122 (!) separate data sources and it would be unrealistic to review all of the within the scope and budget of ODYSSEA.

Appendix A at the end of the Deliverable provides a quick reference of the conclusions and recommendations with respect to each data source. Appendix B provides a draft of license agreement that ODYSSEA may use as a negotiation tool with data sources whose existing terms of use are either unclear or insufficient for ODYSSEA's needs. This draft license agreement is based on many of the commonalities of the licensing schemes of the data sources studied in this Deliverable.

The draft license is in fact a proposal for a realistic legal solution to facilitate flexibility in the multi-use of data and wide adoption of project results, while allowing to reward those that invested in collecting the data and making it available. It also takes into consideration any relevant issue related to data transfer from and to the EU as the ODYSSEA will collect data to and provide on-demand derived data services to all Mediterranean countries.

It should be noted that survey of the underlying ethical principles with regard to the multi-use of the data was already covered by deliverable D1.2: POPD – Requirement No. 2.

Finally, it should also be noted that this Deliverable 13.3 is a living “work in progress” document, given that new desirable data sources will be identified as the ODYSSEA programme progresses. Towards the end of the project, recommendations will be made regarding improved sustainable mechanisms, through realistic legal and regulatory solutions.

2 Copernicus Marine Environment Monitoring Service (CMEMS)

2.1 About Copernicus – overview

Copernicus is a civil program of the European Union for earth observation and monitoring based on satellite earth observation and non-space data. This initiative is headed by the European Commission in partnership with the European Space Agency (ESA) and the European Environment Agency (EEA).

European Union Regulation 377/2014 established Copernicus (the “**Regulation**”).² The preamble to the Regulation clarifies that “The data and information produced in the framework of Copernicus should be made available on a full, open and free-of-charge basis subject to appropriate conditions and limitations, in order to promote their use and sharing,

² <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0377&from=EN>

and to strengthen European Earth observation markets, in particular the downstream sector, thereby enabling growth and job creation”.³

The services offered by Copernicus address six main thematic areas:⁴

- Atmosphere monitoring
- Marine environment monitoring
- Land monitoring
- Climate change
- Emergency management
- Security

This analysis will focus on the Marine Monitoring and Climate Change services, as they are most relevant to the ODYSSEA project which focuses on the Mediterranean Sea addressing both the open sea and the coastal zone.

The Regulation provides that access and use of Copernicus data and information is to be made available under predefined technical conditions and subject to the following limitations:⁵

- licensing conditions originating from third party data and information;
- formats, characteristics and dissemination means of Copernicus data and information;
- security interests and external relations of the Union or its Member States;
- risk of disruption, for safety or technical reasons, of the system producing Copernicus data and Copernicus information;
- ensuring reliable access to Copernicus data and Copernicus information for European users.

Notably, the Regulation was preceded by EU Regulation 911/2010 on the European Earth monitoring programme (GMES).⁶ In 2013, this preceding regulation was supplemented by

³ Preamble (36) to the Regulation.

⁴ Article 5(1) of the Regulation.

⁵ Article 23 (2) of the Regulation.

delegated regulation 1159/2013 on establishing registration and licensing conditions for GMES users and defining criteria for restricting access to GMES dedicated data and GMES service information.⁷ Albeit it was legislated pursuant to the preceding regulation, this supplemental delegated regulation remains valid and effective, pursuant to the provisions of the superseding Regulation.⁸

In general, the supplementing regulation provides that Copernicus data (formerly GMES) shall be free of charge for the purpose of reproduction, redistribution, communication to the public, adaptation, modification and combination with other data and information, on a worldwide basis. The supplementing regulation also provides that the source of the data shall be credited, the data is provided without warranty, and that the data can be subjected to restrictions where it conflicts with other principles such as intellectual property rights or data protection rights.

Most of the data and information delivered by the Copernicus services are made available and accessible to citizens and organizations on a free and open access basis, through a series of access points. Each access point, such as the [Marine Environment Monitoring Service](#) and the [Climate Change Service](#), has different conditions for the access and use of the data. They are analyzed below.

2.2 The Marine Environment Monitoring Service

The “License to use the Copernicus Marine Service Products”, annexed to the Marine Environment Monitoring Service’s “Service Commitments and License”, sets out the terms of use for the Copernicus Marine Service Products.⁹ The license provides that the use of the marine data is subject to the following terms:

- It is free-of-charge (section 2.1 of the license)

⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010R0911>

⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1159&from=EN>

⁸ Article 33(1) of the Regulation provides that “Regulation (EU) No. 911/2010 is repealed”, but that “Any measure adopted on the basis of Regulation (EU) No 911/2010 shall remain valid” (Article 33(2)).

⁹ <http://marine.copernicus.eu/services-portfolio/service-commitments-and-licence/>

- It is worldwide, perpetual and royalty free (section 2.2 of the license)
- It permits internal use, modifications, adaptations, and redistribution (in modified or original form), for any purpose (section 2.2 of the license).
- Credit to the Copernicus Marine Environment Monitoring Service shall be provided on redistribution (section 2.3 and 2.4 of the license). The credit shall be in the form and format specified in the license.
- Legal rights in the original Marine Service data will remain with the EU, yet legal rights in data created as a result of modifying or adapting the Copernicus Marine Service data will be owned by the person or entity making the modification or adaptation (section 3 of the license).

2.3 The Climate Change Service

The Climate Change Service's license to use Copernicus Products sets out the terms of use for the Copernicus climate change Service.¹⁰

The Copernicus Products referred to in the license are all products listed in the Climate Change Service's Product Specification or any other items available through an European Centre for Medium-Range Weather Forecasts (ECMWF) Copernicus portal, except those items which are flagged as being subject to their own separate terms of use.

The license provides that the use of the climate change data is subject to the following terms:

- It is free-of-charge, worldwide, perpetual and royalty free (section 4.1 of the license)
- It permits internal use, modifications, adaptations, and redistribution (in modified or original form), for any purpose (section 4.2 of the license).

¹⁰ http://climate.copernicus.eu/sites/default/files/repository/20170117_Copernicus_License_V1.0.pdf . Notably, the license refers to use of data both from the Copernicus atmosphere monitoring service (CAM5) and the Copernicus climate change service (C3S).

- Credit to the Copernicus Climate Change Service shall be provided on redistribution (section 5 of the license). The credit shall be in the form and format specified in the license.

The license’s section regarding ownership rights is not sufficiently clear on the question of what rights remain with the EU. However, the section makes it perfectly clear that legal rights in data created as a result of modifying or adapting the Copernicus Climate Change Service data will be owned by the person or entity making the modification or adaptation, as long as the modified or adapted data is not a result of using the applications and workflows accessible on the European Centre for Medium-RangeWeather Forecasts (ECMEF) Copernicus portals (section 6 of the license).

2.4 Conclusions and recommendations

- ODYSSEA may use, modify and distribute the Copernicus data for commercial purposes as well as any other purpose.
- If ODYSSEAmodifies or adaptsCopernicus data, the resulting data is ODYSSEA’s intellectual property, as long as the modified or adapted data is not a result of using the applications and workflows accessible on the European Centre for Medium-RangeWeather Forecasts (ECMEF) Copernicus portals.
- ODYSSEANEeds to provide proper attribution and credit to Copernicus. Therefore, ODYSSEA should give proper credit when communicating to the public any data or products created from Copernicus in the following manners (whichever is relevant):
 - Generated using E.U. Copernicus Marine Service Information
 - Generated using Copernicus Climate Change Service information [Year]
 - Contains modified Copernicus Climate Change Service information [Year]
- ODYSSEA should indicate to its users that “neither the European Commission nor European Centre for Medium-RangeWeather Forecasts are responsible for any use that may be made of the Copernicus Information or Data it contains”.

3 EMODNet

3.1 About EMODNET – overview

As explained on the EMODNet website, “the European Marine Observation and Data Network (EMODnet) is a network of organisations supported by the EU’s integrated maritime policy. These organisations work together to observe the sea, process the data according to

international standards and make that information freely available as interoperable data layers and data products.”

EMODNet consists of various data themes, including Bathymetry, Geology, Seabed Habitats, Chemistry, Biology and Physics.

3.2 Using EMODNet Data

A number of statements on the EMODNet website indicate that the data is generally available without restriction on use.¹¹ However, the website also indicates that “Metadata should be consulted for information on any usage restrictions and how to acknowledge the source”¹² and that “Users are requested to acknowledge EMODnet and its data providers when using outputs based on its services, data or products”.¹³

3.3 Conclusions and recommendations

- ODYSSEA should check the meta-data of all EMODNet data envisioned for use and determine any usage restrictions. If the meta data does not mention usage restrictions, the data is free for use by ODYSSEA, including for commercial purposes.
- Whenever ODYSSEA uses EMODNet data, it should provide attribution as follows:

“Data used in this [type of derived work: e.g. publication/report/model/map...] was made available by the EMODnet project, [insert URL of EMODNet data theme being used] funded by the European Commission Directorate General for Maritime Affairs and Fisheries. These data were collected by [name of the data originator]”

- The name of the data originator can be normally found in the metadata

4 SeaDataNet

¹¹ <http://www.emodnet.eu/data>, noting that the data are “interoperable and essentially free of restrictions on use “

¹² <http://www.emodnet-humanactivities.eu/support.php>

¹³ <http://www.emodnet-geology.eu/terms-of-use/>

4.1 About SeaDataNet - overview

SeaDataNet is pan-European infrastructure initiative for ocean and marine data management. It is funded by the European Commission's Sixth Framework Programme (FP6),¹⁴ and coordinated by the Institut Français de Recherche pour l'Exploitation de la Mer (IFREMER).¹⁵

SeaDataNet provides a system for managing large and diverse data sets collected by oceanographic fleets and automatic observation systems. SeaDataNet offers different services, among them are more than 100 national oceanographic data centers and marine data centers from 35 countries. The data centers manage large sets of marine and ocean data, originating from their own institutes and from other parties in their country, in a variety of data management systems and configurations.¹⁶

4.2 Using SeaDataNet Data

Access to and use of SeaDataNet services is subject to the SeaDataNet Data Policy which includes the following license provisions:¹⁷

- Retrieval of data, by electronic download, and the use of data sets is free of charge, unless otherwise stipulated in any particular database accessible through the SeaDataNet portal.
- Users must acknowledge data sources upon publication of SeaDataNet data.
- Any person making substantial use of data must get clearance from the data source prior to publication and should possibly consider the data source(s) for co-authorship of published results. The meaning of "substantial use" is not explained in the license but possibly refers to use in large magnitudes or unique, innovative, systematic or repetitive ways.

¹⁴ [The 6th Framework Programme.](#)

¹⁵ <http://wwz.ifremer.fr/>

¹⁶ <https://www.seadatanet.org/About-us>; <https://www.seadatanet.org/About-us/SeaDataNet>.

¹⁷ <https://www.seadatanet.org/content/download/1695/10119/file/SeaDataNet+Data+Policy.pdf?version=1>

- Data Users should not give to third parties any SeaDataNet data or product without prior consent from the source.
- The use or reproduction of data for a commercial purpose may require prior written permission from the data source.

Additional conditions may apply with respect to each data type accessible through the SeaDataNet portal.

4.3 Conclusions and recommendations

- ODYSSEA needs to communicate with the data source prior to publication and discuss the authorship of published data originating from SeaDataNet. In this regard, ODYSSEA needs to obtain prior consent from the SeaDataNet data source in order to give access to third parties to SeaDataNet data or products.
- ODYSSEA needs to provide proper attribution and credit to the data sources, as follows:

“Data used in this [type of derived work: e.g. publication/report/model/map...] was made available by the SeaDataNet project, [insert URL of SeaDataNet project being used]. These data were collected by [name of the data originator]”

5 MonGOOS (Part of GOOS)

5.1 About MonGOOS - overview

The Mediterranean Operational Network for the Global Ocean Observing System (MONGOOS) was established in 2012 in order to further develop operational oceanography in the Mediterranean Sea. MONGOOS supplants the previous activities of MOON¹⁸ and MEDGOOS¹⁹ programs.

Among the services that MONGOOS offers is the in-situ and forecasts systems. ODYSSEA seeks to use the data derived from numerous different in-situ systems which are displayed

¹⁸ <http://www.moon-oceanforecasting.com/>

¹⁹ <http://www.capemalta.net/medgoos/index.html>

through the MONGOOS system.²⁰ Each in-situ system has its own governing terms and conditions for the use and redistribution of its data, as follows.

5.2 AFS²¹and ALERMO²²

These data sources do not present any readily noticeable terms and conditions or license for use. We therefore provide the following conclusions:

- ODYSSEA should communicate with these data source and discuss the usability of the data originating from these sources.
- At a minimum, ODYSSEA should provide proper attribution and credit to the data sources, as follows:

“Data used in this [type of derived work: e.g. publication/report/model/map...] was made available by the [AFS/ALERMO]project, [insert URL of AFS/ALERMO projects being used]. These data were collected by [name of the data originator]”

5.3 CYCOFOS (CYPPOM)

According to the disclaimer placed on the CYCOFOS website, the information on the CYCOFOS website is “free of charge to end users”,²³ yet the “CYCOFOS data are not to be used for commercial purposes without a written permission”.²⁴ Additionally, registration is required in order to view the information contained in the CYCOFOS database.²⁵

²⁰ Based on the “Odyssea Data Inventory” list provided in D13.1. Note that with respect to the source PREVIMER – MENOR, its website indicates that it no longer operates (http://www.previmer.org/en/about_previmer).

²¹ <http://www.oc.phys.uoa.gr/oceanf.html>

²² <http://pelagos.oc.phys.uoa.gr/mfstep/bulletin/>

²³ <http://www.oceanography.ucy.ac.cy/cycofos/bulletin.html>

²⁴ <http://www.oceanography.ucy.ac.cy/cycofos/login.php>

²⁵ <http://www.oceanography.ucy.ac.cy/cycofos/login.php>

Finally, CYCOFOS requests that when using its data, the list of publications presented at <http://www.oceanography.ucy.ac.cy/cycofos/publications.html>, be cited.

Based on the above, we provide the following conclusions:

- ODYSSEA should communicate with CYCOFOS to discuss the usability of the data.
- At a minimum, ODYSSEA should provide proper attribution and credit to the data sources, as follows:

“Data used in this [type of derived work: e.g. publication/report/model/map...] was made available by the CYCOFOSproject, <http://www.oceanography.ucy.ac.cy/cycofos/index.html>, with a reference to the publications listed at <http://www.oceanography.ucy.ac.cy/cycofos/publications.html>”.

5.4 Iberia Biscay Irish – Monitoring Forecasting Centre (IBI MFC)²⁶; SAMPA²⁷

This data source does not present any readily noticeable terms and conditions or license for use. We therefore provide the following conclusions:

- ODYSSEA should communicate with this data source and discuss the usability of the data originating from these sources.
- At a minimum, ODYSSEA should provide proper attribution and credit to the data sources, as follows:

“Data used in this [type of derived work: e.g. publication/report/model/map...] was made available by the [Iberia Biscay Irish – Monitoring Forecasting Centre]project, [insert URL of project being used]. These data were collected by [name of the data originator]”

5.5 MARIA (Malta Atmospheric and Wave Forecasting System) WAM Central Med²⁸

²⁶ http://portus.puertos.es/Portus_RT/?locale=es

²⁷ <http://www.puertos.es/es-es/Paginas/AFondo/Sampa.aspx>

²⁸ <http://www.capemalta.net/maria/waveforecast/regional/results.html>

This data source does not present any readily noticeable terms and conditions or license for use. We therefore provide the following conclusions:

- ODYSSEA should communicate with this data source and discuss the usability of the data originating from this source.
- At a minimum, ODYSSEA should provide proper attribution and credit to the data source, as follows:

“Data used in this [type of derived work: e.g. publication/report/model/map...] was made available by the Weatherrouting dans la Méditerranée (WERMED)project, <http://www.capemalta.net/maria/pages/about.html>.”

5.6 POSEIDON

According to the Poseidon terms of use,²⁹the content and services of the POSEIDON website are property of the Hellenic Center for Marine Research (HCMR) and are disseminated to the users of the content for their personal use only. Commercial use or any other use of the information is prohibited without the permission of HCMR.

We therefore provide the following conclusions:

- ODYSSEA should communicate with this data source and discuss the usability of the data originating from this source.
- At a minimum, ODYSSEA should provide proper attribution and credit to the data source, as follows:

“Data used in this [type of derived work: e.g. publication/report/model/map...] was made available by the Poseidon System, the Hellenic Centre for Marine Research, <http://poseidon.hcmr.gr/index.php>.”

5.7 ROSARIO³⁰

²⁹ http://poseidon.hcmr.gr/article_view.php?id=133

³⁰ <http://www.capemalta.net/MFSTEP/results0.html>

This data source does not present any readily noticeable terms and conditions or license for use. We therefore provide the following conclusions:

- ODYSSEA should communicate with this data source and discuss the usability of the data originating from this source.
- At a minimum, ODYSSEA should provide proper attribution and credit to the data source, as follows:

“Data used in this [type of derived work: e.g. publication/report/model/map...] was made available by the ROSARIO Malta Shelf Forecast, <http://www.capemalta.net/MFSTEP/results0.html>.”

5.8 Sicily Channel Regional³¹

- The terms of the Sicily Channel Regional, which is operated by the Institute for marine and coastal environment national research council (IAMC-CNR) in Oristano, prescribes that no part of the system or its database shall, by way of trade or otherwise, be lent, sold, hired or circulated for any purpose.³² We therefore provide the following conclusions:
 - ODYSSEA should communicate with this data source and discuss the usability of the data originating from this source.
 - At a minimum, ODYSSEA should provide proper attribution and credit to the data source, as follows:
 - “Data used in this [type of derived work: e.g. publication/report/model/map...] was made available by IAMC-CNR in Oristano, <http://www.seaforecast.cnr.it/forecast/en/content/scrm>.”

6 GEOSS

6.1 About GBIF - overview

³¹ <http://www.seaforecast.cnr.it/forecast/en/content/scrm>

³² <http://www.seaforecast.cnr.it/forecast/en/content/disclaimer>

The Global Earth Observation System of Systems (GEOSS) facilitates the sharing of environmental data, information and knowledge collected from the large array of observing systems contributed by countries and organizations within Group on Earth Observations (GEO). It is operated by the European Space Agency (ESA).

6.2 License and Use

The GEOSS data originates from third party data providers. Use of that data must respect the terms and conditions of the respective data sources.

6.3 Conclusions and recommendations

ODYSSEA should check the meta-data of the particular GEOSS data items envisioned for use, determine the governing terms and follow them.

7 Med-OBIS

7.1 About Med-OBIS- overview

According to the MedOBIS (Mediterranean node of Ocean Biogeographic Information System) website, the “MedOBIS vLab provides reliable and quality controlled marine species datasets, meta-data and satellite data from all over the Mediterranean Sea. The concept of MedOBIS, in agreement with OBIS, is to create a comprehensive system for the retrieval of Mediterranean biological data and to deliver them to OBIS and ultimately to GBIF.”³³

7.2 License and Use

OBIS is made up of numerous data sources. Each one is subject to its own license agreement, which may be one of three:

³³ <https://portal.lifewatchgreece.eu/>

- CC0,³⁴ under which data are made available for any use without restriction or particular requirements on the part of users
- CC-BY,³⁵ under which data are made available for any use provided that the data used is attributed appropriately to the particular sources
- CC-BY-NC,³⁶ under which data are made available for any use provided that the data used is attributed appropriately to the particular sources and provided the use is not for commercial purposes

ODYSSEA may use data which is designated in OBIS as CC0 or CC-BY, but should not use data designated as CC-BY-NC without specific clearance from the corresponding data source.

ODYSSEA must also acknowledge the particular data source, using the scientific convention of citing sources in conjunction with the use of the dataODYSSEA. OBIS provides citation guidelines which ODYSSEA should follow.³⁷

7.3 Conclusions and recommendations

ODYSSEA may use data which is designated in OBIS as CC0 or CC-BY but should not use data designated as CC-BY-NC without specific clearance from the corresponding data source.

ODYSSEA should also provide credit and attribution to the particular data source within OBIS whose data ODYSSEA uses. ODYSSEA should follow OBIS citation guidelines.³⁸

8 GBIF

³⁴ This is the Creative Commons Public Domain Dedication statement, available at <https://creativecommons.org/publicdomain/zero/1.0/legalcode>

³⁵ This is the Creative Commons Attribution License, available at <https://creativecommons.org/licenses/by/4.0/legalcode>

³⁶ This is the Creative Commons Non Commercial Attribution License, available at <https://creativecommons.org/licenses/by-nc/4.0/legalcode>

³⁷ <http://www.iobis.org/data/policy/>

³⁸ <http://www.iobis.org/data/policy/>

8.1 About GBIF - overview

GBIF—the Global Biodiversity Information Facility—is an international network and research infrastructure aimed at providing open access to data about all types of life on Earth.

8.2 License and Use

GBIF is composed of multiple data sources. Each one is subject to its own license agreement, which may be one of three:

- CC0, under which data are made available for any use without restriction or particular requirements on the part of users
- CC-BY, under which data are made available for any use provided that attribution is appropriately given for the sources of data used
- CC-BY-NC, under which data are made available for any use provided that attribution is appropriately given and provided the use is not for commercial purposes

ODYSSEA may use data which is designated in GBIF as CC0 or CC-BY but should not use data designated as CC-BY-NC without specific clearance from the corresponding data source.

ODYSSEA must also acknowledge the particular data source whose data ODYSSEA uses, using the scientific convention of citing sources in conjunction with the use of the data.³⁹ Where appropriate, this needs to be done through use of a Digital Object Identifier (DOI) applying to the dataset (s) and/or data downloads. GBIF offers citation guidelines which ODYSSEA should follow.⁴⁰

8.3 Conclusions and recommendations

ODYSSEA may use data which is designated in GBIF as CC0 or CC-BY but should not use data designated as CC-BY-NC without specific clearance from the corresponding data source.

³⁹ <https://www.gbif.org/terms/data-user>

⁴⁰ <https://www.gbif.org/citation-guidelines>

ODYSSEA should also provide credit and attribution to the particular data source within GBIF whose data ODYSSEA uses. GBIF offers citation guidelines which ODYSSEA should follow.⁴¹

9 AquaMaps

9.1 About AquaMaps - overview

Aquamaps offers standardized distribution maps for over 25,000 species of fishes, marine mammals and invertebrates. It is a “tool for generating model-based, large-scale predictions of natural occurrences of species”.⁴²

9.2 License

AquaMaps is licensed under the Creative Commons Attribution-Noncommercial 3.0 Unported License (CC-BY-NC).⁴³ The CC-BY-NC permits use of the licensed material for any purpose except one that is primarily intended for or directed toward commercial advantage or private monetary compensation.

We cannot rule out that the use intended by ODYSSEA will be considered “primarily intended for commercial advantage”, particularly given ODYSSEA’s vision to license out the data for a fee in the future and compete with other data sources.

Additionally, the AquaMaps website states that “we strongly encourage partnering with the AquaMaps team for larger research projects or publications that would make intensive use of AquaMaps to ensure that the limitations of the data set are clearly understood and addressed...”

9.3 Conclusions and recommendations

In light of the above, ODYSSEA should communicate with this data source and discuss the usability of the data originating from this source.

⁴¹ <https://www.gbif.org/citation-guidelines>

⁴² http://www.aquamaps.org/main/AquaMaps_Algorithm_and_Data_Sources.pdf#page=1

⁴³ <https://creativecommons.org/licenses/by-nc/3.0/>

10 MAPAMED

As far as we could determine, the MAPAMED data is not yet available online.⁴⁴ We recommend contacting the MedPAN secretariat responsible for MAPAMED, to ascertain the status of the MAPAMED data and its availability.

11 Vulnerable Marine Ecosystem (VME)

11.1 VME - overview

The Vulnerable Marine Ecosystem (VME) database is “a compilation of information on management measures taken to reduce current or potential impact on areas where VMEs are known or likely to occur”.⁴⁵ It is operated by the Food and Agricultural Organization (FAO) of the United Nations.

As indicated on the VME website, the database “was developed specifically in response to a request from the UN General Assembly”.

11.2 License

According to the terms and conditions applicable to the FAO website,⁴⁶ “Except where otherwise indicated, content may be copied, printed and downloaded for private study, research and teaching purposes, and for use in non-commercial products or services”.

The terms also specify that use in commercial contexts must be coordinated in advance with the FAO.⁴⁷

⁴⁴ http://medpan.org/main_activities/mapamed/

⁴⁵ <http://www.fao.org/in-action/vulnerable-marine-ecosystems/about-vme-database/en/>

⁴⁶ <http://www.fao.org/contact-us/terms/en/>

⁴⁷ A license request form is available at <http://www.fao.org/contact-us/licence-request/en/> but inquiries can also be made by email to copyright@fao.org.

As mentioned above, we cannot rule out that the use intended by ODYSSEA will be considered use in commercial contexts, particularly given ODYSSEA's vision to license out the data for a fee in the future and compete with other data sources.

11.3 Conclusions and recommendations

In light of the above, ODYSSEA should communicate with this data source and discuss the usability of the data originating from this source.

12 Geomorphology of the oceans

12.1 Geomorphology of the oceans –overview

This data source offers a global seafloor geomorphic features map data, in a number of formats.⁴⁸

12.2 License

This source is licensed under the Creative Commons Attribution 4.0 International License (CC-BY).⁴⁹This license makes the data available for any use provided that the data used is attributed appropriately to the particular sources.

12.3 Conclusions and recommendations

- ODYSSEA may use this data source, and needs to provide proper attribution and credit, as follows:

“Data used in this [type of derived work: e.g. publication/report/model/map...] was made available by Seafloor Geomorphic Features Map by [Harris, P.T., Macmillan-Lawler, M., Rupp, J. and Baker, E.K. 2014. Geomorphology of the oceans. Marine Geology, 352: 4-24.](#), licensed under a [Creative Commons Attribution 4.0 International License](#)”.

⁴⁸ <http://www.bluehabitats.org/>

⁴⁹ http://www.bluehabitats.org/?page_id=58

13 InterRidge Global Database of Active Submarine Hydrothermal Vent Fields

13.1 InterRidge Vents Database –overview

This source offers a comprehensive list of active submarine hydrothermal vent fields for use in academic research and education. As stated by the InterRidge Working Group (WG) on Global Distribution of Hydrothermal Activity (InterRidge News 9.1, April 2000): “The idea of this data-base is that it should become the international standard for all known sites of submarine hydrothermal activity which can be updated simply by submitting an electronic message to the InterRidge Office.”⁵⁰

13.2 License

This database is licensed under the Creative Commons Attribution-Noncommercial-Share Alike 3.0 Unported License. Under this license, data are made available for any use provided that the data used is attributed appropriately to the particular sources and provided the use is not for commercial purposes.

As mentioned above, we cannot rule out that the use intended by ODYSSEA will be considered use in commercial contexts, particularly given ODYSSEA’s vision to license out the data for a fee in the future and compete with other data sources.

13.3 Conclusions and recommendations

In light of the above, ODYSSEA may not use this data source unless it concludes a separate, appropriate license with this data source.

14 World Database on Protected Areas

14.1 World Database on Protected Areas –overview

⁵⁰ https://vents-data.interridge.org/about_the_database

The World Database on Protected Areas (WDPA) regards itself as “the most comprehensive global database of marine and terrestrial protected areas”.⁵¹ It is a joint project between UN Environment and the International Union for Conservation of Nature (IUCN). The online data is updated monthly.

14.2 License

The WDPA license prohibits use of the data for commercial use, defined as “a) any use by, on behalf of, or to inform or assist the activities of, a commercial entity (an entity that operates ‘for profit’) or b) use by any individual or non-profit entity for the purposes of revenue generation”.⁵² Such use is prohibited without the prior permission of the UN Environment and the International Union for Conservation of Nature (IUCN).

As already mentioned, we cannot rule out that the use intended by ODYSSEA will be considered use in commercial contexts, particularly given ODYSSEA’s vision to license out the data for a fee in the future and compete with other data sources.

14.3 Conclusions and recommendations

In light of the above, ODYSSEA may not use this data source unless it concludes a separate, appropriate license with this data source.

15 Spatial Data for the Red List of Threatened Species

15.1 Spatial Data for the Red List of Threatened Species—overview

The International Union for Conservation of Nature (IUCN) maintains this Red List of Threatened Species. As the website explains, it “provides taxonomic, conservation

⁵¹ <https://www.protectedplanet.net/c/world-database-on-protected-areas>

⁵² <https://www.protectedplanet.net/c/terms-and-conditions>

status and distribution information on plants, fungi and animals that have been globally evaluated using the IUCN Red List Categories and Criteria”.⁵³

15.2 License

The IUCN license prohibits use of the data for commercial use, defined as “a) any use by, on behalf of, or to inform or assist the activities of, a commercial entity (an entity that operates 'for profit') or b) use by any individual or non-profit entity for the purposes of revenue generation”.⁵⁴ Such use is prohibited without the prior permission of the IUCN.

As already mentioned, we cannot rule out that the use intended by ODYSSEA will be considered use in commercial contexts, particularly given ODYSSEA’s vision to license out the data for a fee in the future and compete with other data sources.

15.3 Conclusions and recommendations

In light of the above, ODYSSEA may not use this data source unless it concludes a separate, appropriate license with this data source.

16 Global Map of Human Impacts to Marine Ecosystems

16.1 Global Map of Human Impacts to Marine Ecosystems—overview

This source is a portion of the data used to calculate 2008 and 2013 cumulative human impacts in the article by Benjamin Halpern, Melanie Frazier, John Potapenko, Kenneth Casey, Kellee Koenig, et al. 2015. Cumulative human impacts: raw stressor data (2008 and 2013). Knowledge Network for Biocomplexity.⁵⁵

16.2 License

53 <http://www.iucnredlist.org/about/introduction>

54 <http://www.iucnredlist.org/info/terms-of-use>

55 <https://knb.ecoinformatics.org/#view/doi:10.5063/F1S180FS>

This data has been dedicated to the public domain and is freely usable by anyone, for any purpose, without charge.⁵⁶ It has been made subject to the Creative Commons Public Domain Dedication statement.⁵⁷

16.3 Conclusions and recommendations

In light of the above, ODYSSEA may use this data freely and without restrictions.

17 United Nations Environment Program - World Conservation Monitoring Centre – Ocean Data Viewer

17.1 UNEP-WCMC–overview

The United Nations Environment Program, World Conservation Monitoring Centre (UNEP-WCMC) offers numerous data sources, including the Ocean Data Viewer.⁵⁸ The Ocean Data Viewer itself offers a number of datasets, including Global Distribution of Cold-water Corals, Global Estuary Database, Global Distribution of Sea Turtle Nesting Sites, Global Distribution of Seagrasses, Global Distribution of Saltmarsh, Global Map of Marine Critical Habitat, Global Distributions of Habitat Suitability for Cold-Water Octocorals and Global Distribution of Seamounts and Knolls.

17.2 License

The Ocean Data Viewer itself is under a license that does not allow commercial use, defined as “a) any use by, on behalf of, or to inform or assist the activities of, a commercial entity (an entity that operates 'for profit') or b) use by any individual or

⁵⁶ <https://knb.ecoinformatics.org/#view/doi:10.5063/F1S180FS>

⁵⁷ This is the Creative Commons Public Domain Dedication statement, available at <https://creativecommons.org/publicdomain/zero/1.0/legalcode>

⁵⁸ <https://www.unep-wcmc.org/resources-and-data/ocean-data-viewer>

non-profit entity for the purposes of revenue generation”.⁵⁹ Such use is prohibited without the prior permission of the UNEP-WCMC.

This same license applies also to the following datasets within Ocean Data Viewer: Global Distribution of Cold-water Corals, Global Estuary Database, Global Distribution of Sea Turtle Nesting Sites, Global Distribution of Seagrasses and Global Distribution of Saltmarsh.

The datasets Global Distributions of Habitat Suitability for Cold-Water Octocorals and Global Distribution of Seamounts and Knolls are licensed under the Creative Commons Attribution 3.0 Unported.⁶⁰ This license makes the data available for any use provided that the data used is attributed appropriately to the particular source.

17.3 Conclusions and recommendations

In light of the above, ODYSSEA may not use the following datasets from Ocean Data Viewer: Global Distribution of Cold-water Corals, Global Estuary Database, Global Distribution of Sea Turtle Nesting Sites, Global Distribution of Seagrasses and Global Distribution of Saltmarsh, unless it concludes a separate, appropriate license with this data source.

ODYSSEA may use datasets Global Distributions of Habitat Suitability for Cold-Water Octocorals and Global Distribution of Seamounts and Knolls, provided that ODYSSEA gives proper attribution to these sources, as follows:

Data used in this [type of derived work: e.g. publication/report/model/map...] was made available by [Dataset name] by [Dataset citation] licensed under the [Creative Commons Attribution 3.0 Unported License](#)”.

18 BirdLife

⁵⁹ https://www.unep-wcmc.org/policies/general-data-license-excluding-wdpa#data_policy

⁶⁰ <http://creativecommons.org/licenses/by/3.0/>

18.1 BirdLife – overview

As the website explains, “BirdLife International is a global partnership of conservation organisations (NGOs) that strives to conserve birds, their habitats and global biodiversity, working with people towards sustainability in the use of natural resources”.

BirdLife offers a number of resources, including a bird species directory, country profiles and case studies.⁶¹

18.2 License

The BirdLife terms provide that “It is strictly forbidden to copy any material from this website for commercial use (other than as necessary for the purpose of viewing the site in the course of business).”⁶² The terms go on to explain that “Any other use of BirdLife International content requires the prior permission of BirdLife International”.

18.3 Conclusions and recommendations

In light of the above, ODYSSEA may not use this data source unless it concludes a separate, appropriate license with this data source.

19 United States Geological Survey (USGS)

19.1 USGS – overview

The United States Geological Survey is a U.S. governmental agency that, among other things, collects, monitors, analyzes, and provides science about natural resource conditions and issues. The USGS website offers numerous datasets and data tools.⁶³

⁶¹ <http://datazone.birdlife.org/home>

⁶² <http://www.birdlife.org/worldwide/terms-and-conditions-use>

⁶³ <https://www.usgs.gov/>

19.2 License

Each particular dataset or data tool within the USGS website is generally subject to its own specific license and usage terms.

19.3 Conclusions and recommendations

ODYSSEA should consult with the licensing and usage terms for each particular dataset or data tool within the USGS website.

This Deliverable has been drafted to the best of our professional judgment and understanding, but there is no guarantee that courts, authorities or third parties will concur with the analysis in this Deliverable.

If you become aware of any other pertinent facts not addressed in this document, or of a misunderstanding by the drafters of this document, please let us know promptly so that we can determine whether additional or supplementary analysis is necessary.

Appendix A - Quick Reference of Conclusions and Recommendations

Source	Conclusions & Recommendations	Commercial Use Permitted?	Fee-based?
Copernicus	<ul style="list-style-type: none"> • ODYSSEA may use, modify and distribute the Copernicus data • If ODYSSEA modifies or adapts Copernicus data, the resulting data is ordinarily ODYSSEA's intellectual property • ODYSSEA needs to provide proper attribution and credit to Copernicus and a disclaimer 	Yes	Free
EMODNet	<ul style="list-style-type: none"> • ODYSSEA should check the meta-data of all EMODNet data envisioned for use, and determine any usage restrictions • Whenever ODYSSEA uses EMODNet data, it should provide attribution 	May vary by data type	Free
SeaDataNet	<ul style="list-style-type: none"> • ODYSSEA needs to obtain prior consent from the SeaDataNet data source in order to give access to third parties to SeaDataNet data or products • ODYSSEA needs to provide proper attribution and credit to the data sources 	Uncertain (requires inquiry with data source)	Uncertain (requires inquiry with data source)
MonGOOS	<ul style="list-style-type: none"> • ODYSSEA should communicate with these data source and discuss the usability of the data originating from these sources: AFS, ALERMO, CYCOFOS, IBI MFS, SAMPA, MARIA WAM Central Med, Poseidon, ROSARIO, Sicily Channel Regional, • ODYSSEA should provide proper attribution and credit to the data sources 	Uncertain (requires inquiry with data source)	Uncertain (requires inquiry with data source)

GEOSS	<ul style="list-style-type: none"> • ODYSSEA should check the meta-data of the particular GEOSS data items envisioned for use, determine the governing terms and follow them 	Uncertain (requires inquiry with data source)	Free
Med-OBIS	<ul style="list-style-type: none"> • ODYSSEA may use data which is designated in OBIS as CC0 or CC-BY, but should not use data designated as CC-BY-NC without specific clearance from the corresponding data source. • ODYSSEA should provide proper attribution and credit to the data sources 	Yes, for data which is designated in OBIS as CC0 or CC-BY. Not for data designated CC-BY-NC	Free
GBIF	<ul style="list-style-type: none"> • ODYSSEA may use data which is designated in OBIS as CC0 or CC-BY, but should not use data designated as CC-BY-NC without specific clearance from the corresponding data source. • ODYSSEA should provide proper attribution and credit to the data sources 	Yes, for data which is designated in OBIS as CC0 or CC-BY. Not for data designated CC-BY-NC	Free
AquaMaps	<ul style="list-style-type: none"> • ODYSSEA should communicate with this data source and discuss the usability of the data originating from this source 	Uncertain (requires inquiry with data source)	Uncertain (requires inquiry with data source)
MAPAMED	<ul style="list-style-type: none"> • Contact the MedPAN secretariat responsible for MAPAMED, to ascertain the status of the MAPAMED data and its availability 	Uncertain (requires inquiry with data source)	Uncertain (requires inquiry with data source)
Vulnerable Marine Ecosystem (VME)	<ul style="list-style-type: none"> • ODYSSEA should communicate with this data source and discuss the usability of the data originating from this source 	Uncertain (requires inquiry with data source)	Uncertain (requires inquiry with data source)

Geomorphology of the Oceans	<ul style="list-style-type: none"> • ODYSSEA may use this data source • ODYSSEA needs to provide proper attribution and credit to the data source 	Yes	Free
InterRidge Global Database of Active Submarine Hydrothermal Vent Fields	<ul style="list-style-type: none"> • ODYSSEA may not use this source unless it concludes a separate license agreement with its provider. 	Uncertain (requires inquiry with data source)	Uncertain (requires inquiry with data source)
World Database on Protected Areas	<ul style="list-style-type: none"> • ODYSSEA may not use this source unless it concludes a separate license agreement with its provider. 	Uncertain (requires inquiry with data source)	Uncertain (requires inquiry with data source)
Spatial Data for the Red List of Threatened Species	<ul style="list-style-type: none"> • ODYSSEA may not use this source unless it concludes a separate license agreement with its provider. 	Uncertain (requires inquiry with data source)	Uncertain (requires inquiry with data source)
Global Map of Human Impacts to Marine Ecosystems	<ul style="list-style-type: none"> • ODYSSEA may use this source without any restrictions 	Yes	Free
Ocean Data Viewer	<ul style="list-style-type: none"> • ODYSSEA may not use this source unless it concludes a separate license agreement with its provider (except for the datasets Global Distributions of Habitat Suitability for Cold-Water Octocorals and Global Distribution of Seamounts and Knolls) 	Uncertain (requires inquiry with data source). The exceptions noted may be used commercially	Uncertain (requires inquiry with data source). The exceptions noted may be used free of charge
BirdLife	<ul style="list-style-type: none"> • ODYSSEA may not use this source unless it concludes a separate license agreement 	Uncertain (requires inquiry with data source)	Uncertain (requires inquiry with data source)

	with its provider.	source)	inquiry with data source)
USGS	<ul style="list-style-type: none"> ODYSSEA should consult with the licensing and usage terms for each particular dataset or data tool within the USGS website. 	Uncertain (requires inquiry with data source)	Uncertain (requires inquiry with data source)

Appendix B –Proposal for License Agreement

THIS DATA LICENSE AGREEMENT effective as of ____ (“Effective Date”), is entered into by and between [ODYSSEA] (“ODYSSEA”) and [PROVIDER] (“Data Provider”).

WHEREAS, Provider has collected and developed certain valuable data on [PROVIDE BRIEF EXPLANATION] (the “Data”);

WHEREAS, ODYSSEA desires to engage in the development and operation of an interoperable and cost-effective platform for multiuse of data;

WHEREAS, ODYSSEA wishes to license the data from Provider and Provider wishes to license the Data to ODYSSEA, under the terms and conditions of this Agreement

THEREFORE, the Parties agree as follows:

1. Provider grants ODYSSEA a non-exclusive, royalty-free, fee-free, non-transferable, worldwide, right and license to extract, reuse, reproduce the Data (in whole, part or substantial portions), adapt, modify and create derivatives from it, combine it with other data and create value added products, to publicly distribute (make available) and share all of the above to ODYSSEA partners and end users, as well as to enable ODYSSEA to use the above for further research and for commercial purposes.
2. The Provider authorizes ODYSSEA to exercise the aforesaid rights and license in and to the Data in all media and formats whether now known or hereafter created, and to make technical modifications necessary to do so.
3. The Provider shall deliver the Data to ODYSSEA [DESCRIBE THE MECHANISM AND TIMESCALES OF DELIVERY OF THE DATA TO ODYSSEA]
4. ODYSSEA’s exercise of its rights are expressly made subject to the following condition: ODYSSEA shall provide the following attribution in the documentation of each product, service or offering that uses the Data:

[INSERT FORM OF CREDIT/ATTRIBUTION]

5. Provider represents and warrants to ODYSSEA that it has sufficient and appropriate rights in the Data to enable it to lawfully grant the above license to ODYSSEA.
6. To the extent possible, and other than as set forth above, the Provider offers the Data as-is and as-available, and makes no representations or warranties of any kind concerning Data, whether express, implied, statutory, or other. This includes, without limitation and except as set forth above, warranties of title, merchantability, fitness for a particular purpose, non-infringement,

absence of latent or other defects, accuracy, or the presence or absence of errors, whether or not known or discoverable. Where disclaimers of warranties are not allowed in full or in part, this disclaimer may not apply to ODYSSEA.

7. To the extent possible, in no event will the Provider be liable to ODYSSEA on any legal theory (including, without limitation, negligence) or otherwise for any direct, special, indirect, incidental, consequential, punitive, exemplary, or other losses, costs, expenses, or damages arising out of this Agreement or use of the Data, even if the Provider has been advised of the possibility of such losses, costs, expenses, or damages. Where a limitation of liability is not allowed in full or in part, this limitation may not apply to ODYSSEA. Notwithstanding the foregoing, no limitation of liability shall apply to Provider's breach of the representation and warranty in Section 5 above.
8. This Agreement and the rights and licenses granted hereunder apply indefinitely, shall not expire, and may only be terminated if ODYSSEA breaches the terms of this Agreement, and does not cure the breach within 45 days of receiving notice thereof from the Provider.
9. This Agreement will be exclusively governed by and construed in accordance with the laws of the England, excluding any otherwise applicable rules of conflict of laws, which would result in the application of the laws of a jurisdiction other than England. Any dispute, controversy or claim which may arise out of or in connection with this Agreement, shall be submitted to the sole and exclusive jurisdiction of the competent court in London. Each Party hereby expressly consent to the exclusive personal jurisdiction and venue of such courts, and waive any objections related thereto including objections on the grounds of improper venue, lack of personal jurisdiction or *forum non conveniens*.
10. Neither Party will, by mere lapse of time, without giving express notice thereof, be deemed to have waived any breach, by the other Party, of any terms or provisions of this Agreement. The waiver, by either Party, of any such breach, will not be construed as a waiver of subsequent breaches or as a continuing waiver of such breach.
11. Neither Party may assign this Agreement or any right or interest under this Agreement without the other Party's prior written consent.
12. Neither Party shall be responsible for delays or failures in performance resulting from events or circumstances beyond the control of such Party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental acts or regulations, fires, communication line failures, power failures, and earthquakes. Performance times shall be considered extended by a period of time equivalent to the period of any delay, which is excusable hereunder.
13. Except as otherwise expressly provided herein, if any term, covenant or condition of this Agreement or the application thereof to any Party or circumstance shall, to any extent, be held to be invalid or unenforceable, then (i) the remainder of this Agreement, or the application of

such term, covenant or condition to Parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law; and (ii) the Parties hereto covenant and agree to renegotiate any such term, covenant or application thereof in good faith in order to provide a reasonably acceptable alternative to the term, covenant or condition of this Agreement or the application thereof that is invalid or unenforceable, it being the intent of the Parties that the basic purposes of this Agreement are to be effectuated.

14. Amendment. This Agreement may not be changed or amended except by a writing expressly referring to this Agreement signed by both Parties.

15. Notices. Any notice, approval, request, authorization, direction or other communication under this Agreement will be given in writing and will be deemed to have been delivered and given for all purposes: (i) on the delivery date if delivered by confirmed facsimile or email; (ii) on the delivery date if delivered personally to the Party to whom the same is directed; or (iii) one business day after deposit with a commercial overnight carrier, with written verification of receipt. Notice shall be addressed as set forth below:

[PROVIDE ADDRESSES FOR NOTICES]

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have each caused its duly authorized representative to execute and deliver this Agreement under seal as of the Effective Date:

ODYSSEA

Provider

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix C – Overview of the Regulatory Regime Governing Data

1. Copyright

Copyright is an intellectual property vehicle rooted in national laws, in European union directives, and in international treaties such as the Berne Convention and the WIPO Copyright Treaty. The objective of copyright law is to enrich the repertoire of works and the variety of expressions in humankind.

Copyright subsists in various types of original works of authorship, such as books, films, computer programs and artwork. Facts and data, however, are not copyrightable, because they are not “original” in the sense of copyrights.

This principle reflects policy considerations aimed at preventing copyright monopoly over facts and data. Such a monopoly would have severely undermined one of the core objectives of copyright law, that is, to promote works of authorship and knowledge for humankind. If information or knowledge were copyrightable, others would be precluded from utilizing and distributing them. In order to avoid this, copyright law keeps information and knowledge, in and of themselves and separate from forms of expression in which they are manifested, in the public domain.

Nevertheless, compilations of data, such as a database, are copyright protectable, but only if the selection, categorization, arrangement and presentation of the compilation constitute original intellectual creations. In order to obtain copyright protection over a database, the owner of the database must prove originality in the database’s assembly and arrangement. For instance, arranging a phonebook in alphabetical order will not be regarded as original. However, arranging it by professional subject matter categories may be considered original.

At any rate, the copyright protection for databases does not extend to the data or itself, but rather to the selection, categorization, arrangement and presentation of the database. Facts and data do not become protectable through their inclusion in a compilation.

The protection afforded by copyright to databases, protects against using material portion of the original selection, categorization, arrangement and presentation of the database.

2. *sui generis*⁶⁴ database right

Database rights are a concept unique in the EU and not found in all other countries. Database rights are based on an EU directive and on national laws implementing the directive across the various EU member states.

The underlying policy considerations in protecting database rights is that the making of databases requires the investment of considerable human, technical and financial resources while such databases can be copied or accessed at a fraction of the cost needed to design them independently.

The object of this database right is to ensure protection of any *investment* in obtaining, verifying or presenting the contents of a database. Such investment may consist of the use of financial resources and/or the expending of time, effort and energy. This is opposed to the protection of databases under copyright, which is only provided where the selection or arrangement of the database's contents an *original* creation.

The objective of database rights is to give the maker of a database the power to prevent the unauthorized extraction and/or re-utilization of all or a substantial part of the contents of that database:

- 'extraction' is the permanent or temporary transfer of all or a substantial part of the contents of a database.
- 're-utilization' is any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission.

Under EU law, the period of protection for database rights is 15 years from the date of completion of the making of the database.

3. Trade secret protection

Trade secret protection is rooted in EU directive as well as in national laws in EU and non-EU countries.

Businesses and non-commercial research institutions invest in acquiring, developing and applying know-how and information. This is the currency of the knowledge economy and it provides a

⁶⁴ *sui generis* is a Latin phrase, meaning "of its (his, her, or their) own kind; in a class by itself; unique". In this context, it refers to a special intellectual property right over databases.

competitive advantage. This investment in generating and applying intellectual capital is a determining factor for their competitiveness and innovation-related performance in the market and therefore their returns on investment.

Businesses and non-commercial research institutions, irrespective of their size, value trade secrets as much as patents and other forms of intellectual property right. They use confidentiality as a business competitiveness and research innovation management tool, and in relation to a diverse range of information that extends beyond technological knowledge to commercial data such as information on customers and suppliers, business plans, and market research and strategies.

Trade secrets cover know-how, business information and technological information where there is both a legitimate interest in keeping them confidential and a legitimate expectation that such confidentiality will be preserved. Such know-how or information should have a commercial value, whether actual or potential.

The definition of trade secret excludes trivial information and the experience and skills gained by employees in the normal course of their employment, and also excludes information which is generally known among, or is readily accessible to, persons within the circles that normally deal with the kind of information in question.

In the interest of innovation and to foster competition, trade secrets do not create any monopoly right to know-how or information protected as trade secrets. Namely, the independent discovery of the know-how or information is possible. For example, reverse engineering of a lawfully acquired product should be considered as a lawful means of acquiring information.

4. Personal data protection

The protection of personal data is based on EU Directive which will be replaced by an EU Regulation in May 2018. National laws also play a major role personal data protection.

Data Protection laws apply to any information concerning an identified or identifiable natural person, which is called a data subject. The principles of data protection do not apply to anonymous information, namely information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable.

Data protection law set out the rights of data subjects and the obligations of those who process the personal data:

- Permissible and impermissible methods of collecting personal data.
- Permissible and impermissible activities in the context of the subsequent processing of the personal data once it is collected.

- Restrictions on the ability to share the personal data with other parties.
- Requirements on technical and organizational safeguards to protect the personal data.
- Restrictions on cross-border transfers of personal data.
- Rights of data subject to review the data about the, correct it, and in some cases request that the data about them be erased.