

MANGŌPARE SENSOR AGREEMENT

DATE [INSERT DATE HERE]

PARTIES

- 1 METEOROLOGICAL SERVICE OF NEW ZEALAND LIMITED, company number 541859 (MetService)
- 2 [INSERT FULL LEGAL NAME], company number [insert company number] (Recipient)

SECTION A: AGREEMENT AND KEY DETAILS

AGREEMENT

MetService agrees to provide, and the Recipient agrees to access, Services, Scientific Products and Data on the terms of the Agreement. The Agreement comprises:

- ▲ Section A (Agreement and Key Details), including this cover page and the signature clauses;
- ▲ Section B (General Terms);
- ▲ Appendix A (Specifications); and
- ▲ Appendix B (Data Transfer Process).

KEY DETAILS

Item	Detail
Start Date	On the date both parties sign the agreement or the date that the Scientific Products are delivered, whichever is the earlier
Purpose	To utilise the Scientific Products to collect and transmit in near real-time oceanographic temperature, pressure, geographical position, and time observation data for use in the development and/or improvement of ocean models, forecasts and other observation related data products, to increase understanding of New Zealand's oceanographic Exclusive Economic Zone, for the purpose of improving the blue economy. To provide the Recipient with Data (collected using the Scientific Products installed on their vessel and fishing equipment) via email or alternative method agreed upon by both parties. Further, to gain feedback from the Recipient to ensure that the Data Transfer Process provides meaningful information, and that Data is provided in a common format.
Scientific Products	The Mangōpare Sensor, and Deck Unit
Operations Platform	The Data processing, storage and delivery system that hosts the accurate ocean analysis and prediction system.
Data delivery and availability	The Data will be supplied:

	<ul style="list-style-type: none"> automatically via email within 24hours of it being offloaded from the deck unit or as otherwise agreed between the parties in writing. <p>in accordance with the Data Transfer Process</p>
Website	www.moanaproject.org
Email addresses for notice	<p>MetService Julie.jakoboski@metocean.co.nz</p> <p>Recipient [insert email address]</p>

SIGNED

SIGNED for and on behalf of
**METEOROLOGICAL SERVICE OF NEW
ZEALAND LIMITED** by:))

Authorised signatory

Print full name

SIGNED for and on behalf of **[INSERT FULL
LEGAL NAME]** by:))

Authorised signatory

Print full name

SECTION B: GENERAL TERMS

1 INTERPRETATION

1.1 Definitions: In the Agreement, the following terms have the stated meaning:

Agreement: Section A (Agreement and Key Details, including the cover page and signature clauses) and Section B (General Terms).

Confidential Information: the terms and conditions of the Agreement and any information that is not public knowledge and which is obtained from the other party in the course of, or in connection with, the Agreement. MetService's Confidential Information includes the Specifications and any Intellectual Property owned by MetService (and its licensors). The Recipient's Confidential Information includes the Location Data).

Data: all data (including the Location Data), content, and information (including Personal Information) owned, held, used or created by or on behalf of the Recipient that is stored using, or inputted into, the Scientific Products.

Data Transfer Process: the data transfer process set out in Appendix B.

Force Majeure: an event that is beyond the reasonable control of a party, excluding an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care.

Intellectual Property Rights: includes copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered or unregistered trademarks and designs, specifications, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. *Intellectual Property* has a consistent meaning.

Key Details: the agreement specific details set out in Section A of the Agreement.

Location Data: the Data which sets out the specific geographical location of the Recipient and its vessel(s) at the time the Data is collected.

Loss: claims, damages, liabilities, losses, costs and expenses (including in relation to any claim made by a third person).

Moana Project: means the project, funded by MBIE which combines Māori knowledge, seafood sector and other ocean data, cutting-edge ocean sensing, genetics and microchemistry, and advanced numerical modelling to provide an accurate ocean analysis and prediction system, and meet the defined research aims.

Objectionable: includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.

Personal Information: has the meaning given in the Privacy Act 1993.

Operations Platform: the operations platform set out in the Key Details.

Purpose: the purpose set out in the Key Details.

Scientific Products: the Scientific Products set out in the Key Details.

Specifications: the specifications set out at Appendix A.

The Zebra-Tech BLE App: the app developed by Zebra-Tech and provided for use of the Moana Project.

Deck Unit: the deck unit developed, as part of the Moana Project, in line with the specifications detailed in Appendix A of this Agreement.

Mangōpare Sensor: the sensor (including all mounting hardware) developed, as part of the Moana Project, in line with the specifications detailed in Appendix A of this Agreement.

Underlying Systems: the software, IT solutions, systems and networks (including the Operations Platform, software and hardware) used to provide the Data, including any third-party solutions, systems and networks.

Website: the internet site at the domain set out in the Key Details, or such other site notified to the Recipient by MetService.

1.2 Interpretation: In the Agreement:

- a clause and other headings are for ease of reference only and do not affect the interpretation of the Agreement;
- b words in the singular include the plural and vice versa; and
- c a reference to:
 - i a **party** to this Agreement includes that party's permitted assigns; and
 - ii **including** and similar words do not imply any limit.

2 OBLIGATIONS

2.1 MetService obligations: In addition to the other obligations of the Agreement, MetService must provide the Scientific Products:

- a in accordance with the Agreement, including any requirements set out in the Key Details, and all applicable laws;
- b exercising reasonable care, skill and diligence;

- c using suitably skilled, experienced and qualified staff;
 - d comply with all Recipient health and safety requirements, processes and procedures while on Recipient sites or Recipient vessels; and
 - e follow the Data Transfer Process.
- 2.2 Recipient obligations:** In addition to the other obligations of the Agreement, the Recipient must do the following, recognising at all times that the Recipient's vessel and fishing operations take precedence:
- a promptly make decisions (including approvals) and provide MetService with all information reasonably required to provide, install and receive Data from and test (for the purpose of product development) the Scientific Products;
 - b provide access to its vessel and associated fishing equipment to enable the installation or removal (either by MetService or its subcontractor) of the Deck Unit or Mangōpare Sensor (as applicable);
 - c at MetService's request, install and remove the Deck Unit or Mangōpare Sensor, in consultation with MetService or its subcontractor, and provide photographs of the installation or removal;
 - d if required by MetService, co-operate with MetService to undertake testing to determine the optimal position of the Deck Unit relative to the working deck, to ensure reliable signal strength;
 - e for Recipients using the Zebra-Tech BLE App, submit Data from the Mangōpare Sensor as soon as possible following the end of each soak, and email the Data to MetService as soon as practicable,
 - f otherwise provide all reasonable assistance to aid MetService in achieving the Purpose, and
 - g return, at the request of MetService, the Scientific Products for calibration.
- 3 CONSIDERATION**
- 3.1 No fees:** No Fees are payable by the Recipient for the Recipient's use of the Scientific Products.
- 3.2 Consideration:** In consideration for the permitting MetService to place the Scientific Products on the Recipient's vessel, MetService will provide the Data to the Recipient in accordance with the Agreement.
- 3.3 Availability:**
- a Subject to clause 3.3b, MetService will use reasonable efforts to ensure the Data is available to the Recipient as outlined in the Key Details. However, it is possible that on occasion the Data may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. MetService will use reasonable efforts to notify the Recipient by email advance details of any unavailability.
 - b The Zebra-Tech BLE App interoperates with a range of third-party service features. MetService does not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third-party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, MetService may cease to make available that feature to the Recipient. To avoid doubt, if MetService exercises its right to cease the availability of a third-party feature, the Recipient is not entitled to any refund, discount or other compensation.
- 3.4 Scientific Products:**
- a MetService agrees to provide to the Recipient the Scientific Products for the duration of the Agreement on the terms and conditions of the Agreement.
 - b The Recipient acknowledges that a separate commercial agreement is required if the Recipient wishes to use the Scientific Products after the termination or expiry of the Agreement. Nothing in the Agreement requires a party to enter into a commercial agreement for use of the Scientific Products after the termination or expiry of the Agreement or otherwise, or on any particular terms.
 - c The Recipient must:
 - i use the Scientific Products solely for the Purpose;
 - ii not, except as expressly provided for in the Agreement:
 - ▲ rent, sell, lease, sublicense, or otherwise transfer the Scientific Products to any third party;
 - ▲ disassemble or reverse engineer the Scientific Products (or any part of them);
 - ▲ modify or service the Scientific Products (except at MetService's express direction);
 - iii ensure the Scientific Products are protected at all times from misuse, damage, destruction (with the exception of usual wear and tear or damage caused by fishing and/or vessel operations) or any form of

- unauthorised use, copying or disclosure;
- iv maintain all proprietary notices on the Scientific Products;
- v not grant a security interest in the Scientific Products;
- vi notify MetService as soon as practicable if any Scientific Products is lost or stolen;
- vii if any Scientific Products is damaged, faulty or breaks down, immediately:
 - ▲ notify MetService; and
 - ▲ cease using the relevant Scientific Product and return it to MetService.
- d **Title and risk:** Risk and legal and beneficial ownership of the Scientific Products remains with MetService (or its licensors) at all times. For the avoidance of doubt, there is no obligation on the Recipient to provide insurance, or similar, for the Scientific Products.

4 DATA

4.1 MetService access to Data:

- a The Recipient acknowledges that MetService will access and use the Data:
 - i to exercise its rights and perform its obligations under the Agreement; and
 - ii in accordance with the Purpose; and
 - iii to access, retain and use the Data beyond the Agreement's term in accordance with the Purpose.
- b To the extent that this is necessary but subject to clause 6, MetService may authorise its personnel and subcontractors to access the Data for the purposes set out in clause 4.1a.
- c The Recipient must arrange all consents and approvals that are necessary for MetService to access the Data as described in clause 4.1a.

4.2 Analytical Data: The Recipient acknowledges and agrees that:

- a MetService may:
 - i use Data to generate anonymised and aggregated statistical, numerical and analytical data (**Analytical Data**); and

- ii use Analytical Data for MetService's internal research and product development purposes and to conduct statistical analysis and identify trends and insights.
 - b MetService's rights under clause 4.2a above will survive termination or expiry of the Agreement;
 - c title to, and all Intellectual Property Rights in, Analytical Data is and remains MetService's property.
- 4.3 Access conditions:** When accessing the Data or the Operations Platform, the Recipient and its personnel must:
- a not impersonate another person or misrepresent authorisation to act on behalf of others or MetService;
 - b correctly identify the sender of all electronic transmissions;
 - c not attempt to undermine the security or integrity of the Underlying Systems;
 - d not use, or misuse, the Scientific Products in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the Scientific Products;
 - e not attempt to view, access or copy any material or data other than:
 - i that which the Recipient is authorised to access; and
 - ii to the extent necessary for the Recipient and its personnel to use the Data in accordance with this Agreement;
 - f neither use the Scientific Products in a manner, nor transmit, input or store any Data, that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading; and
 - g comply with any terms of use on the Website, as updated from time to time by MetService.

- 4.4 Agent:** The Recipient acknowledges and agrees that to the extent Data contains Personal Information, in collecting, holding and processing that information through the Scientific Products, MetService is acting as an agent of the Recipient for the purposes of the Privacy Act 1993 and any other applicable privacy law.

5 INTELLECTUAL PROPERTY

5.1 Ownership:

- a Subject to clause 5.1b, title to, and all Intellectual Property Rights in, the Scientific Products, the Operation Platform, the Website, and all Underlying Systems is and remains the property of MetService (and its licensors). The Recipient must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.
- b Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains the property of the Recipient. The Recipient grants MetService a worldwide, non-exclusive, fully paid up, non-transferable and irrevocable licence to use, store, copy, modify, make available and communicate the Data for any purpose in connection with the exercise of its rights and performance of its obligations in accordance with the Agreement (including the Purpose).
- c MetService may permit its third-party service providers to access and use the Data and Analytical Data for the purpose of providing services to MetService.
- 5.2 New Intellectual Property:** Subject to clause 5.1b, all new Intellectual Property created or developed by MetService (or its licensors) in its internal use of the Data and Analytics Data, is owned by MetService on creation of that Intellectual Property.
- 5.3 Know-how:** To the extent not owned by MetService, the Recipient grants MetService a royalty-free, transferable, irrevocable and perpetual licence to use for MetService's own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by MetService in the provision of the Scientific Products.
- 5.4 Feedback:** If the Recipient provides MetService with ideas, comments or suggestions relating to the Scientific Products or Underlying Systems (together feedback):
- a all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by MetService; and
 - b MetService may use or disclose the feedback for any purpose.
- ## 6 CONFIDENTIALITY
- 6.1 Security:** Each party agrees that, unless it has the prior written consent of the other party, it will:
- a keep confidential at all times the Confidential Information of the other party; and
 - b ensure that any personnel or professional advisor to whom a party discloses the other party's Confidential Information is aware of, and complies with, this clause 6.1.
- 6.2 Disclosure required:** The obligations of confidentiality in clause 6.1 do not apply to any disclosure:
- a for the purpose of performing the Agreement or exercising a party's rights under the Agreement;
 - b of the participants name, vessel name and vessel number for the purpose of assisting with the sensor roll-out. (e.g., with industry councils such as Fisheries Inshore New Zealand, Deepwater Group, Pāua Industry Council, Southern Inshore Fisheries);
 - c required by law (including under the rules of any stock exchange);
 - d of Confidential Information which:
 - i is publicly available through no fault of the recipient of the Confidential Information or its personnel; or
 - ii was rightfully received from a third party without restriction and without breach of any obligation of confidentiality; or
 - e by MetService if required as part of a *bona fide* sale of its business (assets or shares, whether in whole or in part) to a third party, provided that MetService enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 6.
- 6.3 Return of information:** Except to the extent that a party has ongoing rights to use Confidential Information, a party must, at the request of the other party following the expiry or termination of the Agreement, promptly return to the other party or destroy all Confidential Information of the other party in the recipient party's possession or control.
- ## 7 LIABILITY
- 7.1 Forecasting exclusion:** The Recipient acknowledges the uncertainty inherent in forecasts and predictions and agrees that, to the maximum extent permitted by law, MetService shall not be liable for any direct or indirect loss, damage, or expense incurred by the Recipient or a third party as a result of the Data provided being or purportedly being wholly or partially incorrect whether through the negligence or otherwise of MetService or its employees or agents. The Recipient indemnifies MetService from and against any claim, action, or proceeding made by, or any loss, cost or expense payable to, any third party including a customer or end user of the Recipient arising from, or in connection with, the Recipient's use of the Data.
- 7.2 Exclusion of liability:** To the maximum extent permitted by law, the Recipient acknowledges and agrees that it:
- a accesses and uses the Scientific Products, the Operation Platform and the Data at its own risk; and

- b MetService is not liable or responsible to the Recipient or any other person for any Loss under or in connection with this Agreement, or the Recipient's access to or use of the Data, Scientific Products or the Operation Platform. This exclusion applies regardless of whether MetService's liability or responsibility arises in contract, tort (including negligence), equity, breach of statutory duty, or otherwise.
- 7.3 No warranties:** MetService does not make or give any express or implied representation, undertaking or warranty relating to the Scientific Products, or the Operation Platform or the Data. Without limiting the foregoing, there are no express or implied warranties:
- a of merchantability or fitness for a particular purpose;
 - b that the use of the Scientific Products, Operation Platform or the Data will not infringe any third party's rights, including Intellectual Property Rights;
 - c that the Scientific Products will not pose a safety or health risk; or
 - d that the Scientific Products or the Data is or will be complete, accurate or up to date.
- 7.4 Recipient liability:** The Recipient will not be responsible or liable for Loss, to the extent that the Loss is caused by MetService's gross negligence or wilful misconduct.
- ## 8 TERM AND TERMINATION
- 8.1 Duration:** Unless terminated under this clause 8, the Agreement starts on the date set out in the Key Details continues for successive terms of 12 months each unless a party gives 90 days' notice that the Agreement will terminate on the expiry of the current term.
- 8.2 No fault termination:** Either party may terminate the Agreement on no less than one month's prior notice to the other party.
- 8.3 Other Termination rights:** Either party may, by notice to the other party, immediately terminate the Agreement if the other party:
- a breaches any material provision of the Agreement and the breach is not:
 - i remedied within 10 days of the receipt of the notice from the first party requiring it to remedy the breach; or
 - ii capable of being remedied;
 - b has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of external administration, or ceases to continue business for any reason; or
- c is unable to perform a material obligation under the Agreement for 30 days or more due to Force Majeure.
- 8.4 Consequences of expiry or termination:**
- a Expiry or termination of the Agreement does not affect each party's rights and obligations accrued before the expiry or termination date.
 - b The Recipient must pay for Services provided before the expiry or termination date.
- 8.5 Obligations continuing:** Clauses which, by their nature are intended to survive expiry or termination, including clauses 6, 7 and 8, continue in force.
- ## 9 DISPUTES
- 9.1 Good faith negotiations:** Before taking any court action, a party must use best efforts to resolve any dispute under, or in connection with, the Agreement through good faith negotiations.
- 9.2 Obligations continue:** Each party must, to the extent possible, continue to perform its obligations under the Agreement even if there is a dispute.
- 9.3 Right to seek relief:** This clause 99 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.
- ## 10 GENERAL PROVISIONS
- 10.1 Force Majeure:** Neither party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure, provided that the affected party:
- a immediately notifies the other party and provides full information about the Force Majeure;
 - b uses best endeavours to overcome the Force Majeure; and
 - c continues to perform its obligations as far as practicable.
- 10.2 Waiver:** To waive a right under the Agreement, that waiver must be in writing and signed by the waiving party.
- 10.3 Independent contractor:** MetService is an independent contractor of the Recipient. No other relationship (e.g., joint venture, agency, trust or partnership) exists under the Agreement.
- 10.4 Notices:** A notice given by a party under the Agreement must be delivered via email to an email address notified by the other party for this purpose. If the notice is given under clause 8, a copy of that email must be immediately delivered (by hand or courier) to the Chief Executive or equivalent officer of the other party at the other party's last known physical address.

- 10.5 Severability:** Any illegality, unenforceability, or invalidity of a provision of the Agreement does not affect the legality, enforceability or validity of the remaining provisions of the Agreement.
- 10.6 Variation:** Any variation to the Agreement must be in writing and signed by both parties.
- 10.7 Entire Agreement:** The Agreement sets out everything agreed by the parties relating to the Scientific Products and supersedes and cancels anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the subject matter of this Agreement that is not expressly set out in this Agreement, and no such representation, warranty or agreement has any effect from the Start Date. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A, and 13 of the Fair Trading Act 1986, and it is fair and reasonable that the parties are bound by this clause 10.7.
- 10.8 Subcontracting and assignment:** Except as set out in clause 5.1, neither party may assign, subcontract or transfer any right or obligation under the Agreement without the prior written approval of the other (not to be unreasonably withheld). The first party remains liable for its obligations under the Agreement despite any approved assignment, subcontracting, or transfer.
- 10.9 Law:** The Agreement is governed by, and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with the Agreement.
- 10.10 Counterparts:** The Agreement may be signed in counterparts, each of which constitutes an original and all of which constitute the same agreement. A party may enter the Agreement by signing and sending (including by email) a counterpart copy to the other party.

APPENDIX A: SCIENTIFIC PRODUCT SPECIFICATIONS**1 MANGŌPARE SENSORS SPECIFICATION****1.1 Depth Range:**

Mangōpare Sensor:	TM200	TM1000
Depth Range:	0-200m	0-1000m
Burst Depth*:	300m	1500m

* Burst Depth is the depth at which the Mangōpare Sensors are damaged in any manner and no longer meet the Specification.

1.2 Sampling regime:

- a 0 – 200 m range (TM200): 1 sample per meter change
- b 0 – 1000 m range (TM1000): 1 sample per meter change between 0-200m. 1 sample per 4 meters between 200-1000m change
- c Static submerged depth sampling: 1 sample every 5 minutes
- d Samples must be an average of observations at a minimum of 1Hz
- e 80% of data return per fishing campaign period

1.3 Temperature:

- a Temperature range: 0 to 35 DegC
- b Accuracy: +/- 0.1 DegC
- c Resolution: 0.01 DegC
- d Response rate: 1 second

1.4 State change detection:

- a Threshold; TM200 sensor = 1m, TM1000 sensor = 1.5m
- b Maximum drift in relation to calibration interval: +/- 0.1 DegC

1.5 Battery:

- a Life: 2 years

1.6 Calibration interval:

- a Mangōpare sensor will remain within Specification for each 2-year calibration interval.

1.7 Data offload protocol:

- a Bluetooth Low Energy

1.8 User Interaction (e.g., Fisher trouble shooting)

- a No requirement, except for during installation, troubleshooting any issues and 2 yearly calibration

2 Deck Unit Specification**2.1 General Specification**

- a Operate as a Bluetooth master, to receive the data from the Mangōpare Sensors.
- b Receive geospatial coordinates from external source and time align them to the Mangōpare Sensors data – giving consideration to spatial offset between the vessel and the position of the sensor during a fishing event.
- c Functionality for user defined static sampling interval
- d Transfer the data via 4G, satellite or Wi-Fi, when available, to Cloud data server
- e Incorporate a solar panel for standalone operation.
- f Receive firmware upgrades via 4G, satellite or Wi-Fi from the Cloud server when issued.

2.2 Certification: The unit will meet any electromagnetic compatibility standards that are required by New Zealand's marine industry.

APPENDIX B: DATA TRANSFER PROCESS

1 Data Acquisition

1.1 Temperature and pressure

- a Sensor begins recording temperature, pressure, and time when it is submerged in water, and stops when it is removed from water.
- b Temperature, pressure, and time are automatically transferred to the Deck Unit via Bluetooth when the sensor reaches the surface (is no longer submerged and is within range of the Deck Unit) in a secure binary packed format.

1.2 Location Data

- a Location Data coordinates and corresponding time stamps are obtained via the Deck Unit.
- b The Deck Unit correlates vessel geographical position coordinates with temperature and pressure measurements using the timestamp transmitted from the sensor.

2 Data Transfer to the cloud

2.1 Deck Unit to Zebra-Tech Cloudserver

- a Temperature, pressure, time and Location Data are subsequently transferred from the Deck Unit to the Zebra-Tech Cloudserver via method outlined in section A . The data is transferred by FTP.
- b Any Data received by the Zebra-Tech Cloudserver is automatically pushed via FTPS to MetService data servers.
- c MetService will use all commercially reasonable and appropriate efforts to maintain the security of the Data during transfer and whilst hosted on Cloudserver.

2.2 Zebra-Tech Cloudsever to MetService database

- a Raw data are stored on secure MetService dataservers.
- b Anonymous, quality-controlled data are ingested into an internal observations database at MetService, where the MetService modelling team can access it for assimilation into ocean models.
- c If any model results are made available, will be made available in accordance with the Ministry for Primary Industries' Guidelines for the Release of Fisheries Information.

2.3 MetService to Recipient

- a The Data will be made available to the Recipient by MetService in the manner set out in the Key Details.