

Data-Sharing Policy for Capercaillie Data

1. Introduction

This data-sharing policy covers the terms under which the Capercaillie Advisory Officer (CAO) and Funders will share capercaillie data with each other and how, on behalf of the Funders and Data Partners, the CAO will process data requests from external parties. This policy will also provide information for Data Partners.

This agreement will be effective from the Effective Date and shall continue until January 2023 with an option to be extended subject to agreement by all Parties. This agreement will be reviewed by the CAO and Funders on an annual basis.

The aim of this policy is to -

1. Set out a consistent approach that will be followed with regards to capercaillie data management and granting others access to the data;
2. Provide information to Data Partners on how their data would be used and the rationale behind granting others access to the data.

1.1. Definitions

'GDPR' The General Data Protection Regulation (GDPR) is in force. It replaces the Data Protection Act 1998.

'Data' means capercaillie data and information (including but not limited to text, graphics and database content) copied, extracted or derived from datasets owned or licensed to us.

'Capercaillie Database' means the central spreadsheet in which all capercaillie data are held which is managed by the CAO.

'Data Partners' means those which have provided capercaillie data to the CAO.

'Data Users' means those who use Data from the Capercaillie Database.

'Data Owners' means those who own capercaillie data.

'Funders' means the funders of the CAO post to include the Royal Society of the Protection of Birds (RSPB), NatureScot, Forestry and Land Scotland (FLS) and the Cairngorms Capercaillie Project (CCP).

'Cairngorms Capercaillie Project (CCP)' means a partnership project which is led by the Cairngorms National Park Authority and funded by the National Lottery Heritage Fund.

'Effective Date' means 06/01/2021.

'Intellectual Property' includes, without limitation, patents, trademarks, service marks, trade names, design rights (whether registered or unregistered), copyright and related rights, proprietary information rights (including rights in computer software and websites), rights in databases, trade secrets, unpatented know-how and all other similar proprietary rights and applications, extensions and renewals for such rights as may exist anywhere in the world.

'Capercaillie Advisory Officer (CAO)' means the advisory officer nominated by the RSPB.

'Capercaillie Advisory Assistant (CAA)' means the advisory assistant nominated by the RSPB.

‘Conservation Data Management Unit (CDMU)’ is the RSPB’s internal data unit that supports RSPB employees with data management.

‘External Data Requests’ means those requests that come from parties outside the Funders.

1.2. Note for Data Partners

Thank you for providing capercaillie data. This data is essential in the conservation of this species as it can be used to monitor population and distribution and inform conservation work and responses to recreation and development proposals. This data is used by RSPB, NatureScot, FLS & the CCP in their work to conserve this species.

Please note that by sharing this data (and signing the ‘Registration Form for use of Capercaillie Data’) you are agreeing to the Capercaillie Advisory Officer (CAO) and Funders using this data in conservation work (full detail section 7). This data may be shared with external parties (if data requests meet the criteria in section 6.2 & 6.3) and will be sent to the National Biodiversity Network (NBN <https://nbn.org.uk/>) where it can then be accessed via the NBN website at a 10km resolution. Data may be shared with relevant landowners e.g., capercaillie data recorded on their land (see section 6.1.3). Any personal data (i.e. names and contact details) will be managed following GDPR regulations i.e. this data will be held securely and only be shared if Data Partners have specifically given permission.

1.3. Note for Data Users

The RSPB holds a secure database of capercaillie data which is maintained by the CAO. These data are sent to the NBN by the RSPB on an annual basis, so they are available to all (at a 10km resolution) via the NBN website. Due to the sensitivity of capercaillie data, access to data at a higher resolution would need to be formally requested as described in section 6 of this policy. Applicants should apply as early as possible for this data to allow time for authorisations and processing.

2. Aims and Objectives

The CAO uses these data to maintain updated, accurate records on capercaillie population and distribution in Scotland. This informs advisory work as it can help protect important capercaillie areas from inappropriate land management and focus conservation efforts on these important areas.

3. Data held

Data held within the capercaillie database includes lek survey data, brood count data, results from the national surveys (winter transects), cold search data and *ad hoc* records, with resolution varying between 1m – 10km. Data dates from 1955 to the present. These data have been provided by conservation non-governmental organisations, statutory agencies, private estates, and private individuals.

4. CAO as data custodian

The CAO acts as the capercaillie data custodian. The CAO will use all reasonable endeavours to ensure the accuracy of the data. However, no warranties or representations are made that any data are accurate, up to date or complete. Save as expressly set out in this policy, all warranties, conditions, representations, terms and undertakings, whether express or implied, including but not limited to accuracy, fitness for purpose, suitability or satisfactory quality, are excluded to the fullest extent permissible by law. To the fullest extent permissible by law, the CAO shall not be liable to you, whether in contract, tort (including without limitation negligence), statutory duty or otherwise,

for any loss, damage, liability, cost or expense whatsoever arising out of or in connection with this data.

The CAO is responsible for collating capercaillie data and its associated metadata, quality assuring the data (where possible), managing the capercaillie database and facilitating access to these data for Funders, Data Partners, relevant landowners and external parties including via the NBN. Data Partners retain ownership of their data.

5. Data Management

5.1 The capercaillie data are stored in a digital Microsoft Excel spreadsheet that is uploaded to Merlin (RSPB mapping software) by the CDMU on an annual basis. The CDMU sends these data to the NBN annually (March) which will then be accessible via the NBN website at a 10km resolution. If data are required at a higher resolution, a data request should be submitted by the applicant to the CAO (see section 6).

5.2 These data are stored on a secure server and are password protected with access limited to the CAO, CAA and staff from CDMU when processing external data requests. These data are also stored on Merlin which can only be accessed by specific named RSPB staff (e.g. Conservation Officers) by the consent of the data manager (CAO). Capercaillie data is also stored on ArcGIS online, with data being fed in through the use of apps and in the creation of maps, which can only be accessed by the CAO, CAA, staff from CDMU and named Funder staff on request. Data Users will take all reasonable measures to prevent unauthorised access, duplication, or distribution of copies of the data in its possession. Data Users shall keep the data confidential and shall not use the data except for the purposes of exercising or performing their rights and obligations under or in connection with this policy (ref section 7.1) or disclose the data in whole or in part to any third party except as provided under this policy.

5.3 The Data will be supplied by the Funders to the CAO on at least an annual basis. FLS will provide any capercaillie data collected within the app Field Maps on an annual request by the CAO. Lek survey data should be supplied to the CAO by June on an annual basis. The data produced by the Cairngorms Capercaillie Project app should be automatically uploaded to the capercaillie database which will be checked for accuracy by the CAO.

5.4 Data Partners must complete the 'Registration Form for use of Capercaillie Data' when submitting data before their data can be accepted and used by the CAO and Funders. This will remain valid for future data submissions, unless permission is withdrawn by Data Partners.

6. Accessing capercaillie data

6.1 How to access capercaillie data

6.1.1. Capercaillie data at 10km resolution is publicly available on the NBN website.

6.1.2. Named funder staff (where use of capercaillie data is specifically relevant to their roles) have full access to obtain, hold and utilise this capercaillie data without restriction, for internal uses. The CAO will facilitate access to capercaillie data.

6.1.3. Landowners have the right to request access to capercaillie records submitted on their land at any time, to be used internally to assist land management decisions. The CAO will facilitate access to capercaillie data.

6.1.4. External data requests must be authorised by the CAO and managed by the CDMU. For commercial data requests there will be a charge from the CDMU of £150+VAT for the first hour taken plus £75+VAT per hour for the second and subsequent hours as this covers processing time. No charge will be levied for data which are to be used for conservation purposes (<https://www.rspb.org.uk/our-work/conservation/conservation-and-sustainability/mapping-and-gis/>). There will be no charge for data requests that are commissioned by the CAO or the Funders.

6.1.5. External data requests from commercial consultancies will be handled solely by the CAO. The CAO will inform all the Funders about external data requests (through sharing a data sharing log on an annual basis) but will not require approval from them when responding. Exceptions to this are data requests that require data collected on FLS land where FLS should be informed before data is released. All the Funders should be consulted on any novel or contentious data requests (such as those that don't fall into routine uses described in section 7.1) before a decision on the release of data is made.

6.2 Access Restrictions

Access to all or part of this data may be restricted for the following reasons:

- If CAO and/or Funders consider that the release of data is likely to put capercaillie at risk. If funders are also Data Owners, they have the right to withhold this data if deemed necessary.
- If Data Partners specify that data should be withheld. This restriction may be temporary or permanent depending on the prior agreement with the Data Partner.
- This data contains personal information in accordance with GDPR regulations. This personal information can be removed from the data to make this available.
- Academic data requests that do not directly relate to capercaillie conservation e.g., undergraduate data requests that fall into this category

6.3 Terms and Conditions of Data Access

- All Funders must be publicly acknowledged in all outputs using this data.
- NatureScot, FLS & CCP are subject to the Freedom of Information (Scotland) Act 2002 ('FOISA') and the Environmental Information (Scotland) Regulations 2004 ('the EIRs') and must inform the CAO if they receive a request for the data supplied under this policy.
- Data mustn't be shared or sold to third parties or used in scientific research with the intention of publication (apart from that which is publicly available) without written consent of CAO and Funders. This is not required when releasing data as part of a FOISA request.
- Data must be kept on a secure server always. Data Users shall ensure that they have taken all adequate technical and organisational measures to prevent unauthorised disclosure of such data.
- For external data requests, data and any derived data should only be used for the purpose stated on release of data. Data should be destroyed once the agreed purpose of this data request has been achieved.
- Where the use of detailed locational data (i.e. at a resolution higher than that which is available on the NBN i.e. 10km) have been conferred through this policy, any outputs containing detailed locational data must be treated confidentially and must not enter the public domain unless agreed in writing with CAO and Funders.
- All personal information will be removed (i.e. Data Partner's details) unless prior written consent is received to share this.

7. Use of capercaillie data

7.1 How capercaillie data is used by CAO and Funders

CAO use of data

The CAO will use this data routinely in performing the following tasks:

- Identify areas where capercaillie are present;
- Advisory work to promote land management beneficial to capercaillie and to help prevent potentially damaging management;
- Support Funders in partnership work e.g. providing advice on potential impact of development or suggest suitable conservation methods to inform management;
- Complete data analyses to monitor population and distribution trends, identify causes of population or distribution change and assess the efficacy of conservation methods;
- Produce reports and presentations for stakeholders and the wider public.

Funders' use of data

RSPB –

Access - Roles that have access to this data include CDMU staff (to assist in the management and facilitation of data) and Conservation Officers in capercaillie areas. The South Highland Senior Conservation Officer should be consulted before data is provided to other RSPB staff outside of these roles.

Use of data - Planning and forestry casework, informing responses to woodland creation to benefit capercaillie, advising organised recreational events, informing set up and running of national surveys, publication of population estimates, informing habitat management on reserves and measuring responses. To minimise disturbance from habitat management/surveys carried out to benefit other species. Research work to benefit capercaillie.

NatureScot –

Access - Roles that have access to this data include the Policy and Advice Manager (Ornithology) who should be informed before data is provided to other NatureScot staff.

Use of data - Planning and forestry casework, informing responses to woodland creation to benefit capercaillie, advising organised recreational events, informing set up and running of national surveys, publication of population estimates, informing habitat management and measuring responses. To minimise disturbance from habitat management/surveys carried out to benefit other species. Research work to benefit capercaillie.

FLS –

Access - Roles that have access to this data include the Environment Forester and Environment Advisor, who should be consulted before data is provided to other FLS staff.

Use of data - Advising land management and operational activities. Advising recreation provision including organised recreational events, informing set up and running of national surveys, publication of population estimates, informing habitat management on FLS land and measuring responses. To minimise disturbance from habitat management/surveys carried out to benefit other species. Research work to benefit capercaillie.

CCP –

Access - Roles that have access to this data include the Cairngorms Capercaillie Project Manager, who should be consulted before data is provided to other CCP or CNPA staff.

Use of data - To support delivery of the Cairngorms Capercaillie Project objectives related to community-led action, awareness raising, habitat improvement work, genetic research, and monitoring.

Any uses of data which are not covered in section 7.1 or if any doubts or queries as to whether a planned use falls beyond that covered in section 7.1 should be clarified through consultation by CAO with Funders.

7.2 Review of use of capercaillie data

The CAO will keep a data log of capercaillie data requests to include detail on data requester, reasoning for data request, how this data is proposed to be used, whether this data was provided with relevant rationale for this decision, any money generated by requests and details of any outputs/publications. This log will also include an inventory of academic projects that use capercaillie data. This will be used to produce an annual report for Funders. This will be made clear to data requesters when submitting data request forms.

8. Amendment and termination of the Agreement

8.1 This Agreement and the Data Partners' permission to use and disseminate the Data shall enter into force from the Effective Date and shall remain in force until 31st July 2023, or until terminated by any party under clause 8.2.

8.2 The CAO or Funders may terminate this Agreement at any time by giving not less than three months' written notice to the other parties.

8.3 Any party may terminate this Agreement in writing, without notice if any of the other parties breach any terms of the Agreement and fails to remedy such breach within 14 days of being notified of such; or becomes insolvent, bankrupt; ceases or threatens to cease to do business or does anything which is or could be likely to be detrimental to the name and/or reputation of any of the parties.

9. General

9.1 All parties confirm that they are not aware of any legal impediment preventing or restricting their entering into and fully performing this Agreement.

9.2 Any notice to be given under this Agreement must be in writing, and may be delivered to the other party's named representative by hand, post or electronic message. In the absence of evidence of earlier receipt, all notices shall be deemed to be served:

9.2.1. if by hand, when delivered;

9.2.2. if by first class post, 48 hours after posting; and

9.2.3. if by electronic message, on completion of transmission

provided that where such delivery or transmission occurs after 4pm on a Business Day or on a day which is not a Business Day, notice shall be deemed to be served at 9am on the following Business Day.

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

9.4 A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

9.5 This Agreement constitutes the entire understanding between the parties and supersedes and replaces all prior agreements, negotiations and discussions regarding data agreements. The parties confirm and acknowledge that they have not been induced to enter this Agreement by any representation, warranty or undertaking not incorporated within it. Nothing in this Agreement purports to exclude liability for fraud.

Signatories

RSPB:



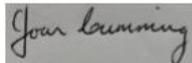
Molly Doubleday, Capercaillie Advisory Officer

NatureScot:



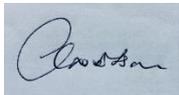
Sue Haysom, Ornithology Adviser

FLS:



Joan Cumming, North Region Environment Adviser

Cairngorms Capercaillie Project:



Carolyn Robertson, Cairngorms Capercaillie Project Manager

Annex 1 – Example RSPB Data Request Form

This will need to be completed for any external capercaillie data requests.

This **Data Request Form** enables you to specify the data you need for your purpose. We will use the information you provide to assess the appropriate data for supply. We will respond within 10 working days of receipt of this form to confirm whether the data are available, normally by issuing a **Data Supply Contract** specifying the data that can be supplied and their conditions of use. There may be a charge made to cover the time we spend assessing and fulfilling your request if this is substantial or if you are using the data for commercial purposes.

We will make every attempt to fulfil all reasonable requests for data and to supply data within 30 days of the signed return of our Data Supply Contract.

When applicable, charges relate to the time taken by RSPB to extract and supply the data. The charges consist of £150+VAT for the first hour taken plus £75+VAT per hour for the second and subsequent hours. If the data requested are already wholly available via the NBN Gateway but you prefer to request the data direct from the RSPB, the charges are £150+VAT per hour for each and every hour taken to supply the data.

Please note that many RSPB datasets are now available through the NBN Gateway (see: www.nbn.org.uk). You may prefer to access data through via the NBN as no charges are applied and the data may be immediately available for you to download. It is not yet possible to supply geographic subsets of datasets via the NBN.

1 DETAILS OF PERSON/ORGANISATION REQUESTING RSPB DATA

Your details are held on file so that we can administer your request and retain your request history. If you are requesting access to a jointly owned or licensed dataset, we may share the information provided below with those co-owners or licensors.

CONTACT NAME

ADDRESS

INVOICE ADDRESS IF DIFFERENT

POSTCODE

POSTCODE

EMAIL

TELEPHONE

MEMBERSHIP OF PROFESSIONAL BODIES OR OTHER ACCREDITATION (including membership numbers):

ORGANISATION NAME

ORGANISATION TYPE

Conservation organisation
University/education

Government/Statutory Agency

Consultancy

Local Record Centre
Individual

Local Authority

Developer

Other eg

2 DATA REQUIRED

DETAILS OF THE DATA REQUIRED (include dataset titles, geographic area, time range and any mapping or analysis required)

Please refer to separate sheet for more details

3 SECURITY

PLEASE EXPLAIN HOW ANY SENSITIVE DATA WILL BE KEPT SECURE

4 PURPOSE

Please give details of the purposes for which you would like to use the data. This information will be used to assess your request and to determine if charges may apply.

PLEASE EXPLAIN WHY YOU WOULD LIKE ACCESS TO THE DATA REQUESTED AND FOR WHAT PURPOSE(S) YOU WILL USE THEM

Please refer to separate sheet for more details

ARE YOU REQUESTING DATA ON BEHALF OF A CLIENT/THIRD PARTY?

Yes No

Please provide details below

DO YOU WISH TO PUBLISH ALL OR ANY PART OF THE DATA?

Yes No

IF YOU PLAN TO PUBLISH ALL OR PART OF THE DATA, PLEASE GIVE DETAILS OF LIKELY PUBLICATION(S) AND THE AUDIENCES TO WHICH THEY WILL BE MADE AVAILABLE

5 SUPPLY FORMAT

PREFERRED FORMAT FOR DATA SUPPLY

NBN download Excel MapInfo table ESRI shape file

text file hard copy

PREFERRED DELIVERY METHOD

NBN Gateway

post (CD or hard copy)

email

6 SIGNATURE

DATE BY WHICH YOU REQUIRE THE DATA:

PLEASE SIGN AND DATE THIS FORM AND RETURN IT TO THE CONSERVATION DATA MANAGEMENT UNIT

Signed by _____ Signature _____ Role _____
Date ___/___/_____

Please complete this form and email it to: dataunit@rspb.org.uk

or post to: **Conservation Data Management Unit, RSPB, The Lodge, Sandy, Beds. SG19 2DL**

If you have any queries relating to this request, please telephone: **01767 693650**

Annex 2 – Example RSPB Data Supply Contract

This will need to be signed before data can be released.

This Data Contract is made between (1) Royal Society for the Protection of Birds acting on behalf of the Dataset Partners listed below (" we ", " our ", " us ", " RSPB ") and (2) the Data Recipient named below (" you ", " your ", " Data Recipient "), subject to and in accordance with the Terms and Conditions overleaf.		
Dataset Partners <input type="checkbox"/> Please refer to separate sheet listing all dataset partners		
1 DETAILS OF DATA RECIPIENT		
Contact Name		
Address	Invoice address if different	
Postcode	Postcode	
Email	Telephone	
Organisation name		
Data restricted to named users? <small>Please refer to separate sheet listing all named users</small>		
Named users:		
2 DATA SUPPLIED		
Dataset name	Resolution	Supply extent
Details of any mapping or analysis required <input type="checkbox"/> Please refer to separate sheet for more details		
Additional conditions of supply, use and publication <input type="checkbox"/> Please refer to separate sheet listing additional conditions		
Data are to be kept on a secure server always. Records are not to be released into the public domain or given out to third parties. Where records are sensitive or restricted the resolution must be put at 10km in any publications, reports or maps. Absence of records does not necessarily infer the absence of a species as we only have data for areas that we've surveyed.		
Please pay particular attention to the supplier column as some data are provided on behalf of other organisations who should be acknowledged accordingly.		
Data supply format: Delivery method: Email		
3 CHARGES		
Charges: £ <input type="text"/> plus VAT (see separate invoice for payment details when charges apply)		

Charges are applied if: (i) the Data are to be used for commercial purposes, (ii) in RSPB's opinion, the Data requested will take longer than one day (during normal working hours) for RSPB to extract. Any Data that are supplied via the NBN Gateway are supplied free of charge.

Charges shall be calculated by reference to the time taken by RSPB to extract and supply the Data:

- For the first hour, £150 + VAT
- For the second and subsequent hours, £75 + VAT per hour (£150 + VAT per hour if the Data requested are already wholly available via the NBN Gateway)

4 TERMS AND CONDITIONS

The preceding sections together with the Terms and Conditions set out below shall comprise the Data Supply Contract ("Contract"), and together shall govern the terms of supply of Data (as defined below) to you.

- a) This Contract shall take effect from the date of the signature of RSPB, as set out below.
- b) In this Contract, "**Data**" means relevant data and information (including but not limited to text, graphics and database content) copied, extracted or derived from datasets owned or licensed to us, which corresponds or correlates to your request for information described in Section 2 above.
- c) Subject to these Terms and Conditions, we shall supply the Data to you in the format and manner as set out in Section 2.
- d) You shall pay us the charges set out in Section 3 above ("**Charges**") within 31 days of the date of delivery of the Data to you, namely the date of posting or the date of email transmission. All Charges are stated exclusive of value added tax which if applicable shall be payable thereon. Where charges are applicable you will be supplied with an invoice for the total payable. Our decision of whether to levy a charge for data provision does not set a precedent with respect to future provision of data.
- e) All intellectual property rights in the Data supplied to you shall belong to us or our licensors. We hereby grant you a non-exclusive, non-transferable, royalty-free, revocable licence to use, copy and adapt the Data supplied to you, subject to the restrictions set out in this Contract. **You shall not sub-license, distribute or sell any Data to anyone else unless specifically approved in section 3.** Where specified, the Data must only be available to and viewed by the individuals named in Section 1. You shall use the Data and any derived Data solely for the purpose set out in this form. You must ensure that appropriate acknowledgements of our, or (as notified by us) our licensor's, copyright and database right ownership, are included in an appropriate position in all copies of Data and any derived data, as follows: "Reproduced by permission of [RSPB / licensor]. © [RSPB / licensor] [insert year of supply]. All rights reserved." Save as expressly stated above or as otherwise agreed in writing by us, no licences or permissions of any kind are granted to you.
- f) Except in relation to any proposed publication as stated in Section 2 above, you shall hold all Data in strict confidence and you shall not disclose it to anyone else without our prior written consent.
- g) Any further publication of, or containing, Data or derived Data, in addition to that stated in Section 2 above, shall be subject to our prior written approval (not to be unreasonably withheld), and shall be submitted to the Conservation Data Management Unit of the RSPB for approval purposes at least 14 days in advance of the proposed date of publication. Copies of all published material containing Data or derived data must be provided to our Conservation Data Management Unit upon request.
- h) You will not disclose any Data to any third party pursuant to any request for information ("**Request**") received by you under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 or equivalent law or regulations in force in Scotland (collectively "**FOI/EIR Law**") unless and until you have complied with the remainder of this sub-clause. You shall forward a copy of the Request to us within 5 working days of receipt, and state whether you intend to disclose any Data, and if so, giving details. We shall respond within 5 working days with a statement setting out our considered opinion on the merits of statutory exemptions under FOI/EIR Law, on where the public interest lies in respect of any qualified exemptions under FOI/EIR Law, and as to whether any disclosure of Data is required. You shall promptly notify us in writing of your agreement or otherwise with our opinion.

Nothing shall prevent you from disclosing Data in discharge of your statutory duties under FOI/EIR Law, but you shall indemnify us against all costs, claims, demands, liabilities, expenses, damages or losses which we may suffer or incur as a result of any such disclosure of Data to which we have not agreed.

- i) If Data is supplied to you in electronic form, you shall ensure that you have taken all adequate technical and organisational measures to prevent unauthorised disclosure of such Data. In addition to your obligations under this Contract, you shall safeguard all environmentally sensitive data as stated in Section 2 above.
- j) We use all reasonable endeavours to ensure the accuracy of the Data. However, no warranties or representations are made that any Data are accurate, up to date or complete. Save as expressly set out in this Contract, all warranties, conditions, representations, terms and undertakings, whether express or implied, including but not limited to accuracy, fitness for purpose, suitability or satisfactory quality, are excluded to the fullest extent permissible by law.
- k) To the fullest extent permissible by law, we shall not be liable to you, whether in contract, tort (including without limitation negligence), statutory duty or otherwise, for any loss, damage, liability, cost or expense whatsoever arising out of or in connection with this Contract or the Data, provided that nothing in this Contract shall exclude or limit our liability to you for death or personal injury due to our negligence or for fraud. You agree that the above exclusions of liability are reasonable based upon the level of risk and payments provided for under this Contract.
- l) We shall not be liable to you for any delay or failure to perform our obligations under this Contract if that delay or failure is caused by circumstances beyond our reasonable control, including (without limitation) floods, fires, failure of telecommunications or internet service provide, or power failures.
- m) Without prejudice to our other rights and remedies at law, we may terminate this Contract and the licence granted under it, with immediate effect, on giving you written notice, if you commit any material or persistent breach of any term of this Contract. In the event of such termination, you shall destroy (or arrange for the destruction of) all Data in your possession or control, or (at our option) return all such Data to us forthwith. On termination of this Contract, all provisions which are intended to survive termination shall continue in full force and effect thereafter.
- n) Our failure or delay to exercise or enforce any right under this Agreement shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times thereafter.
- o) This Contract constitutes the entire understanding between us with respect to the subject matter hereof and supersedes and replaces all prior agreements, negotiations and discussions between us relating to it. You hereby confirm and acknowledge that you have not been induced into this Contract by any representation, warranty, or undertaking not expressly incorporated into it. However, nothing in this Contract purports to exclude liability for fraud.
- p) No variation of this Contract shall be valid unless it is in writing and signed by both of us.
- q) You shall not be entitled to assign this Contract or any of your rights or obligations hereunder without our express prior written consent.
- r) The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract.
- s) In the event of any conflict between these Terms and Conditions and any other Section of this Contract, the other Section shall prevail (but only to the extent necessary to resolve the conflict).
- This Contract shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the non-exclusive jurisdiction of the English courts.

I agree to be bound by and abide by the Terms and Conditions set out above and to pay to RSPB all applicable Charges.

For and on behalf of the recipient

Agreed by Signature Role Date

For and on behalf of the RSPB

Approved by Signature Role Date

Please sign this contract and email it to: dataunit@rspb.org.uk
or post to: **Conservation Data Management Unit, RSPB, The Lodge, Sandy, Beds. SG19 2DL**
If you have any queries, please telephone: **01767 693650**